SENATE—*Monday, January 27, 1986*

The Senate met at 12 noon and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, the Reverend Richard C. Halverson, D.D., offered the following prayer:

Let us pray.

Eternal Father, "God of all comfort, Who comforts us in all our affliction," on this 13th anniversary of the Paris accords, which ended American involvement in Vietnam, we join with multitudes in remembering those still missing in action, or prisoners of war. It is painful to contemplate the unimaginable suffering, the indescribable pain, and unspeakable boredom endured by those who have been languishing so many years. Minutes become hours, hours—days, days—weeks, weeks—months, and months stretched into years without relief. Nor can we, who have not experienced such loss, identify with their loved ones for whom anxiety and hope were mixed, and finally became hopelessness and despair. God of all comfort, we pray for those who remain in Vietnam. Your love and grace in the confidence that You, the Omnipresent One, are there. We pray for their loved ones the peace and comfort that only the God of all comfort can give. And we pray for those public servants and private citizens who do not forget, and are doing all in their power to resolve this unconscionable situation. We pray in His name Who suffers when those He loves suffers. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The distinguished majority leader is recognized.

SCHEDULE

Mr. DOLE. Mr. President, under the standing order, the leaders have 10 minutes each followed by a special order for the Senator from Wisconsin [Mr. PROXMIRE] for not to exceed 15 minutes.

That will be followed by routine morning business not to exceed 1 hour with Senators permitted to speak therein for not more than 10 minutes each.

Following routine morning business, the Senate will resume consideration of S. 638, Conrail. Pending is the committee substitute.

I understand that there may be two or three amendments. Hopefully some can be worked out, and accepted by both sides.

I do not know of any rollcall votes that will occur. There will be no rollcall votes after 6 p.m. in any event.

For the information of all Senators, the State of the Union Message will occur tomorrow, Tuesday, January 28. Members are asked to be in the Chamber no later than 8:30 p.m. so that we can go as a group to the House of Representatives Chamber.

NOTICE CONCERNING 1985 YEAR END REPORT REQUIRED BY THE FEDERAL ELECTION CAMPAIGN ACT, AS AMENDED

Mr. DOLE. Mr. President, I wish to advise that the mailing and filing date for the 1985 Year End Report required by the Federal Election Campaign Act, as amended is Friday, January 31, 1986. Principal Campaign Committees supporting Senate candidates file their reports with the Senate Office of Public Records, 232 Hart Building, Washington, DC 20510.

The Senate Office of Public Records will be open from 9 a.m. until 12 midnight on the filing date for the purpose of accepting these filings. The extended evening hours, after 5:30 p.m., are being instituted on a trial basis to ascertain the level of interest in extended filing hours.

In general, reports will be available 24 hours after receipt. For further information, please do not hesitate to contact the Public Records Office on (202) 224-0322.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The distinguished Democratic leader is recognized.

Mr. BYRD. Mr. President, I thank the distinguished President pro tempore who presides over the Senate at this moment.

A POET AND SCHOLAR AMONG US

Mr. BYRD. Mr. President, most of our distinguished colleagues are multidimensional men and women. They possess talents and interests that reach beyond the skills for which they have most often earned respect here in the Senate. For example, two of our colleagues, Senator HART of Colorado and Senator COHEN of Maine, recently wrote and published a novel together that has done well in the bookstores, I am told. Before entering electoral politics Senator MOYNIHAN of New York was a university professor, and is esteemed in policy and academic circles for the authoritative essays and studies on a variety of questions that he periodically publishes. Those are but a few examples of Senate talent that I could cite.

But today, as a lover of poetry, myself—and I do not write poetry, but I do like poetry—I want to call the Senate's attention to the poetic talents of one of our other colleagues.

Senator SPARK MATSUNAGA of Hawaii was first elected to the Senate in 1976, and became a member of this body after 14 years of service in the House of Representatives. Educated at the University of Hawaii and Harvard University Law School, Senator MATSUNAGA rose to the rank of lieutenant colonel in World War II as a member of the famed Nisei 100th Infantry Battalion. Much decorated, Senator MATSUNAGA was twice wounded and counts among his military awards the Purple Heart with Oak Leaf Cluster.

In addition to his exemplary work in the Senate, Senator MATSUNAGA has taken the time and the pains required to compose many verses of admirable poetry. Recently, some of Senator MATSUNAGA's poems were included in a complimentary 1986 pocket calendar that Senator MATSUNAGA had printed and sent to me. He may have sent the same to others.

I also call our colleagues' attention to an exceptional piece of research and analysis that Senator MATSUNAGA coauthored a few years ago on the operations and nature of the House of Representatives' Rules Committee. I remember that he gave me a copy of this book shortly after he came to the Senate—or, it may have been immediately before he came to the Senate, and during his campaign for election to the Senate.

That work, entitled "Rulemakers of the House," should be interesting reading for those of us who were Members of the House of Representatives prior to our election to the Senate. I am also confident that students of American government, and the Congress in particular, will find Senator MATSUNAGA's study a rich resource for many years.

Senator MATSUNAGA is to be congratulated for the contributions that he had made in his book on the House Rules Committee, for his fine poetry, and for his continuing work among us here in the Senate.

Mr. President, I now ask unanimous consent that the lines and verses of Senator MATSUNAGA's poetry to which

I earlier alluded be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

Success in life demands an early goal,
Which you yourself must set and strive to gain.
'Tis better to be known as a good man than a great one,
For greatness is an assessment of mortals;
Goodness a gift of God.

Envy him not who sings and trips along,
For saddened hearts oft hide behind a song.
Remember happier days you've known and sing,
And Life's detractors lose their painful sting.

A soul completely immersed in one's work
Reflects a youthful face.

Commence your work wherever you can;
Your major task may be to start.

In fending Life's soul-trying blows,
Let Patience be your winning ploy.

To seek out the wrong is only half the task;
To set it right is the tougher half.

Strike at your foe and be struck in return;
Befriend your foe and secure your own peace.

Learn well the languages and the arts:
A genius unable to express himself is no better than a silent fool.

As small as it may seem,
A good deed is always worth the doing.

The manner in which you perform your daily tasks
Builds and reveals your personal character.

Personal suffering begets deeper understanding of human values.

DEJA VU

(By Spark Matsunaga)

I've been here before, I say—
That house, that wall, that brook
I've seen them all before;
Yet I've neither been this way
Nor read in any book
Of what I see, I'm sure.
What strange things
Our minds must know;
We know not yet our minds.

ON RELIGION

(By Spark Matsunaga)

When I think of the foolish fight
That men o'er religious differences wage,
I can see mortals in blind plight,
Headed towards one goal, whatever their rage.
As waters run from different heights and ferret rivers to a common sea,
So do men make different rites and found religions to one great Deity.

Mr. BYRD. Mr. President, I ask unanimous consent that I may reserve my time throughout the day.

The PRESIDING OFFICER (Mr. NICKLES). Without objection, it is so ordered.

Mr. BYRD. Mr. President, I yield the floor.

RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER. Under the previous order, the distinguished Senator from Wisconsin [Mr. PROXMIRE] is recognized.

WHY ARE SO MANY AFRAID TO TALK ABOUT THE GORBACHEV ARMS CONTROL PROPOSAL?

Mr. PROXMIRE. Mr. President, hurray for Scotty Reston of the New York Times, and Mary McGrory of the Washington Post. These two veteran columnists are among the few who have fractured the thundering silence that has greeted the most momentous, far reaching, and very possibly hypocritical arms control proposal since the dawn of the nuclear age: The Gorbachev proposal for eliminating nuclear arms within 14 years, and drastically reducing conventional arms.

McGrory denounced the lack of a full scale reaction in this country as "The Insult of Silence." Reston searched out the most constructive and realistic parts of the massive Gorbachev package, and ignored the rest. In all fairness, President Reagan did say that the Gorbachev proposal offered new and constructive possibilities. Sure that was a reaction. But it was a vague, generalized response.

What kind of reaction did this Gorbachev bombshell get from the Arms Control and Disarmament Agency? How about the State Department? The Defense Department? The Senate Foreign Relations Committee? The House Foreign Relations Committee? Answer: Nothing. As McGrory wrote: The answer in all cases was the insult of silence. And yet the silence of much of official Washington was understandable. With an arms control package this complex, responsible officials could plead caution while they think it over.

But how about the American press? Certainly this astonishing change in arms control policy by the other superpower—our prime nuclear adversary in the world—should be expected to provoke a raging flood of discussion and debate from the great American press. How many widely circulated columnists are there in this country today: conservative, liberal, middle of the road? Answer: They are countless. There are hundreds of editorial pages, separate, competing, and proudly independent. The country is swamped in radio and television commentators.

All of these opinion leaders often desperately search day after day for relevant and significant comment on our country and its future. In general they do an enlightening and impressive job. Our press is probably the best in the world and certainly the best this country has ever enjoyed. It is better informed. It is fairer. It is provocative. It is amusing. We live in a golden age of discussion and debate.

So what as happened to comment—pro and con—on the most significant arms control proposal of our time? Where are these guys? There has been far more in the press about the Chicago Bears quarterback Jim McMahon's headband and his alleged compliments for New Orleans women than there has been about a proposal that could carry with it the fate of the world.

Obviously, these commentators have thought about discussing this Gorbachev proposal. So come on fellas. Let us in on your thoughts. Since the Gorbachev proposals may have more to do with the fate of this nuclear world than any other development in a long time, why have they not given us the benefit of debate?

The great British political theorist, Walter Bagehot, years ago wisely observed that the strength of democracy lies precisely in the vigorous differences of opinion and the debate on the big crucial issues. Bagehot argued that the give and take of vigorous public debate resulted in wiser decisions in a democracy than in dictatorships that prevent public dissent.

And where does that big clash of opinion take place in America? In America most of the real public debate takes place not on the floor of the Congress, not in political campaigns, and not in campaigns for the Presidency. The continuous day-after-day, week-after-week debate that counts the debate that millions of Americans hear and see, the debate that really determines public opinion, takes place in the American media: in the newspapers, on radio, on television. This is the discussion that reaches tens of millions of Americans, and determines public opinion.

Certainly when the General Secretary of the Communist Party of the Soviet Union proposes the most drastic and far reaching arms control program in history, our great media should discuss it. Instead, the country suffers a yawning silence. It is as if Gorbachev had never spoken.

This Senator has said on the floor of this body that the Gorbachev proposal to banish nuclear weapons from the face of the Earth is so far out, so unrealistic, so impossible that it is ridiculous. Does that mean this Senator would flatly reject the Gorbachev initiative forthwith? Certainly not. As James Reston has written, the Gorbachev verification suggestions, for example, for on-the-spot investigation have great promise.

Also Gorbachev's proposal to negotiate an end to nuclear weapons testing is not new. But, if we can negotiate it, it would greatly serve the interest of

peace, especially in concert with the new verification initiative. We should thoroughly examine Gorbachev's suggestion for banning chemical weapons. Why should we not pursue his startling idea for limiting the major conventional weapons that have much the same impact as nuclear weapons?

We have a golden opportunity to begin the most constructive negotiations with the Soviet Union to achieve peace since the beginning of the nuclear age. That is this Senator's judgment. That judgment may be wrong—seriously wrong. Possibly we should not touch any of these Gorbachev initiatives. I do not know, but what I do know is that follow them or not we ought to talk about them. We should debate them, discuss them. In this case silence is a shocking sign of weakness for this great democracy.

CORNELL KICKS THE PORK BARREL POLS IN THE TEETH

Mr. PROXMIRE. Mr. President, late last year over the objections of this Senator the Senate appropriated some $12 million without peer review and without competitive bids to Syracuse University for a research project. The award was vigorously protested by university leaders throughout the country. In the judgment of this Senator it was sheer pork barrel politics at its worst. The true victim of this policy of making awards based on sheer political power is not the university which can provide the higher quality and lower price research. The prime victim is the Nation's national interest and the American taxpayer.

Yesterday's New York Times carried an article that spoke most eloquently for a policy by the Congress of sticking strictly to peer review and competition for such research awards. One of the Nation's great universities, Cornell, declared that it will accept Federal research grants only if they are free of politics and subject to competitive bidding by colleges. And, Mr. President, Frank Rhodes, the president of Cornell University, was not just blowing smoke when he made that announcement. He was referring to a $10 million grant recently designated for a new campus center for a supercomputer whose capabilities far exceeds those of ordinary computers. The $10 million is contained in a bill that mentions Cornell as a recipient. Mr. President, this rejection by Cornell of an award most institutions would kill for speaks with the most profound eloquence of how deeply the university community resents the policy of the Congress passing out awards to universities to undergird a senatorial or congressional campaign.

Cornell is the first great university to speak from principle. They deserve a world of credit for doing so. Ten universities, including Cornell, were awarded grants totaling $65.6 million in the bill that passed the Congress last month. So far, Cornell is the only one to announce that it would not accept the money if merit review procedures were bypassed. It is rare but wonderful when any recipient of congressional goodies bites the hand that is feeding it. When it happens, the Congress should sit up and take notice. It is just possible that fair and honest, merit based allocations of congressional millions may turn out to be better politics than the usual awards to reelect incumbent Members of the Congress.

Mr. President, I ask unanimous consent that an article by Gene Maeroff in the Sunday, January 26, 1986, New York Times reporting the Cornell reaction, and a wire I have received as of December 20, 1985, from President Rhodes of Cornell, be placed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the New York Times, Jan. 26, 1986]

CORNELL SPURNS GRANTS GIVEN WITHOUT REVIEW

(By Gene I. Maeroff)

At a time when some universities are getting direct research grants by lobbying in Congress, Cornell University has declared it will accept such money only if it is free of politics and subject to competitive bidding by colleges.

Cornell, in a letter being distributed to its faculty, said it would welcome a merit review of its qualifications to get a $10 million grant recently designated for a new campus center for a supercomputer, whose capabilities far exceed those of ordinary computers. The funds are contained in a bill that mentions Cornell as a recipient.

The grant was provided without the knowledge of university officals, through the initiative of Senator Mark Hatfield, an Oregon Republican. Money would go to Cornell and an Oregon company helping to build the supercomputer unless someone else produces an equal or superior proposal.

"I determined that Cornell could not accept a funding award if it circumvented traditional merit-review procedures," said Frank Rhodes, the president of Cornell, which will continue to develop the supercomputer whether or not it gets the $10 million grant.

CHALLENGE TO PROCEDURE

What is at stake in Cornell's stand is the process through which individual universities seek funds and their supporters in Congress earmark the money, rather than allocating it after a merit review. Under such a review, all institutions competing for the funds submit proposals, which are evaluated by a panel of independent scientists.

The section of the Defense Department that is to distribute the grant, the Defense Advanced Research Projects Agency, said that it was setting up competition for the $10 million grant based on a merit review.

The bill's language relating to Cornell and the supercomputer project "unambiguously opens it to competition," said Craig I. Fields, deputy director of the engineering applications office of the agency.

"I imagine Cornell looked at the language and wanted the world to understand that they were not seeking special favor and were willing to stand on their merit," he said.

HARM TO RESEARCH SEEN

Cornell is among a few dozen major research universities that have condemned the direct grants in joint statements as harmful to research because such allocations do not ensure that money goes to those best qualified to use it. Cornell officials said they wanted to emphasize the need for an open allocations, free of political influence.

Smaller institutions and those without a long tradition of strong research prefer the direct grants because, they say, money awarded by panels of experts generally goes to a handful of prestigious universities.

"Frankly, for too long peer review has been a pipeline for the haves to continue and the have-nots to be shunted aside," said Charles Coffin, director of government relations at Northeastern University in Boston, which was designated in the same bill for a $13.5 million grant for engineering research. "'One man's peer review is another's old boy network,' as John Silber, the president at Boston University, has said."

GRANTS TOTAL $65.6 MILLION

Ten universities, including Cornell and Northeastern, were awarded grants totalling $65.6 million in the bill that was passed last month. So far, Cornell is the only one to announce it would not accept the money if merit review procedures were bypassed.

The other schools are Wichita State University in Kansas, the University of Nevada at Las Vegas, the University of Kansas, Iowa State University, a consortium of institutions known as the Oregon Graduate Center, Oklahoma State University, Rochester Institute of Technology and Syracuse University.

Some leaders in research hailed Cornell's decision.

"It is not easy in these times for a university president to bite a hand that is trying to feed his institution," said Robert Rosenzweig, president of the American Association of Universities, an organization of leading research universities. "But it certainly is admirable."

[Mailgram]

DECEMBER 20, 1985.

Senator WILLIAM PROXMIRE,
530 Dirksen Senate Office Building,
Washington, DC.

Amendment No. 1378 to the continuing resolution for the Department of Defense provides 10 million dollars for supercomputer development. These funds were later identified in the conference report with Cornell University. Cornell respects the responsibility of Congress to set priorities in broad policy areas such as access to supercomputers and restoring U.S. leadership in supercomputer technologies. The university attaches equal importance to the merit-review processes used by funding agencies to select specific projects for support.

Cornell University will not accept funding awards which bypass normal review procedures. We are told that Amendment No. 1378 was intended to help restore U.S. leadership in supercomputer technology, a purpose we fully support, but was not intended to circumvent such merit review. The university did not develop or support an initiative intended to bypass merit review.

FRANK H.T. RHODES,
President, Cornell University.

GENOCIDE: A STATE-SPONSORED CRIME

Mr. PROXMIRE. Mr. President, recently the Washington Post carried a review of John Simpson and Jana Bennett's book, "The Disappeared and the Mothers of the Plaza: The Story of the 11,000 Argentinians Who Vanished." This book serves as another reminder of the atrocities that are committed under some governments and of the urgent need for the Genocide Convention.

Ever since the massive, State-sponsored killing that occurred in Argentina between 1976 and 1983 has been publicized, many comparisons have been made between events there and those in Nazi Germany. The killing that occurred in Argentina was of a much smaller scale, but it serves as a harsh reminder that mankind has not changed since the Holocaust and that the possibility of genocide is still a real and present danger.

One of the most frightening aspects of the Argentine tragedy is that "the horror of it all went unremarked." The Post review comments that, "Evil was everywhere, every day. It was so normal, so accepted, so banal. And so few spoke out."

The reviewer seems surprised that most of those who did speak out were foreigners. This is disappointing, perhaps, but it should not be surpising. History indicates that people living under violent, repressive regimes tend to react with denial, fear, and, finally, numbness. The horror of events saps the emotional resolve of the people.

The present Alfonsin government deserves great credit for holding the former military regime accountable for its crimes. However, it can never make up for the 11,000 lives lost. Perhaps if other countries had spoken out more vehemently, early on, some of those lives would have been spared. It is important for other nations to speak on behalf of oppressed populations, to champion their basic rights and press for reforms. This is the underlying premise of the Genocide Convention, and this is why we need to ratify it.

MEASURING THE HYPE ON STAR WARS

Mr. PROXMIRE. Mr. President, it is of critical importance to the Congress that the technological feasibility of the star wars program be well understood. Decisions involving billions in tax dollars should not be based on partial information or data which has been deliberately inflated to portray a rose picture.

What does it mean when a 103-foot Titan missile body is blown apart by a chemical laser in a test of star wars? Are we ready for deployment? Why was the test publicized so widely by the SDI office? Why has there been a steady drum beat of publicity from that office about breakthroughs in various SDI technology?

Here is an interesting contrast. The SDI office deals with some of the most highly classified studies and tests in the history of our country. They have knowledge of technology the Russians would die to have. So do they conduct their research in a closely guarded environment without public scrutiny? Hardly. Instead, they find every opportunity to make public their accomplishments and crow about successes.

This is a high visibility public relations strategy—a form of lobbying the American public and the Congress for more funding. The military officers in charge of the SDI program are Madison Avenue specialists in selling their product. They are salesmen in uniform, publicists, and entertainers, hoping to mold public opinion by a repetition of success stories until there is no questioning, no suspicion about the technical feasibility of star wars.

That is why there is no substitute for accurate press reporting on the SDI program. It is the responsibility of the American press to weigh and balance competing claims of success and failure. Out of that analysis may flow a national consensus.

Mr. President, I can think of no better example of this kind of evaluation than in a recent article of James McCartney of the Philadelphia Inquirer and I ask unanimous consent that his article from January 5, 1986, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Philadelpha Inquirer, Jan. 5, 1986]

BEHIND THE HYPE, QUESTIONS PERSIST ON SPACE DEFENSE

(By James McCartney)

WASHINGTON.—The picture was right there on your television set in September: a 103-foot Titan missile, weighing 165 tons, under attack by a "Star Wars" laser.

There was a brilliant flash of light and the missile tilted, then collaped in flames.

The unquestionable visual message: President Reagan's controversial Star Wars program, which aims at developing an anti-ballistic missile system and is officially known as the Strategic Defense Initiative (SDI), is working.

That message, and that television film, have become major objects of controversy in the scientific world today.

One of the nation's leading laser experts, Kosta Tsipis of the Massachusetts Institute of Technology, described the film and the test itself as an effort at "bamboozling the public."

Both, he said, were misleading. "The experiment had absolutely nothing to do with the ability of a laser to shoot down a missile," Tsipis said in a telephone interview.

"It is a technology pursued in the 1970s. It was a very old laser. The lethality demonstration has been around for years. The wavelength of the laser is not appropriate to SDI purposes; it is too long.

"This is the kind of bamboozling of the public the SDI program is undertaking," he said.

SDI officials do not dispute that the laser—and the technology—used in the test was old. But they say that critics have "misunderstood" the test, that it was designed to determine how much heat was necessary to destroy a missile, not to show that the SDI Program had developed a missile-killing capability.

The incident illustrates the continuing uproar in the scientific world over the Star Wars program that has come into sharp focus in recent weeks.

As Reagan prepares to ask for substantial new funds for the program, Gen. James Abrahamson, SDI director, and his top aides have claimed sweeping scientific breakthroughs that they say have increased confidence that Star Wars will work. Abrahamson in recent weeks repeatedly has referred to "exciting" and "incredible" progress.

But many scientists are complaining publicly about what they term "hype" from those promoting the program and are questioning whether significant progress has been made in the $26 billion research program that has become the apple of Reagan's eye.

A detailed examination of the status of major scientific challenges facing the program, complemented by a series of interviews with scientists on both sides, reveals this picture:

No technical breakthroughs have been made in the central scientific and technical problem areas facing Star Wars, nor have any been claimed by Abrahamson and his top aides. Some progress has been made, however, in marginal areas.

It is still not possible to determine whether a defensive system against Soviet missiles that would protect the entire U.S. population is scientifically feasible. This was the goal set by Reagan when he announced the SDI program in March 1983.

No weapons or support systems for SDI have yet been developed to the point that it is clear that they will work.

No decisions have been made on the basic question of how a Star Wars system might be structured, its size or even what kinds of weapons would be used—or, as Abrahamson puts it, what its organizational "architecture" might be.

SDI officials say Reagan will request between $4.5 billion and $5 billion for the program in the new budget, about 63 percent more than Congress approved last year.

How much progress has been made on developing a Star Wars system?

To work, the system would have to be able to intercept thousands of Soviet missiles, many traveling at 17,000 m.p.h., and destroy them before they reached U.S. targets. It would require:

Space-based sensors to locate, identify and track missiles within four minutes after they were launched.

Weapons to destroy at least 2,100 Soviet missiles in the first three or four minutes after launched, at distances of up to 1,000 miles, and about 250 more in the next 25 minutes.

Computers to take information from the sensors and give instructions to the weapons, aiming them at missiles on flight-paths that would extend halfway around the world.

Here is a report on the progress, or lack of it, in each of these major areas as pieced together from current Strategic Defense Initiative literature, statements by SDI official

and contractors and interviews with scientists:

SENSORS

According to John Scott of Energy-Environmental Research Group Inc., SDI sensor specialists, present technology does not permit the kind of "wide-scale and detailed resolution" of objects that would be necessary for Star Wars. Nor does it permit positive identification of thousands of objects in space. "The discrimination problem is a terrible one," he said.

Sensors today are also far too heavy to be space-based, and no way has been found to protect them so that they would not be subject to Soviet attack.

However, Abrahamson's special assistant, Maj. Simon Worden, said that the "premier breakthrough" in the last year has been the discovery of techniques to discriminate and identify targets, using particle beam and laser technology.

Said Thomas Karas of the congressional Office of Technology Assessment: "What they've got is an interesting idea. What they don't have is all the things it would take to make it work."

WEAPONS

Two major kinds of weapons are under intensive research: kinetic energy weapons, which would fire high-speed projectiles at about 20,000 m.p.h.; and "directed energy" or speed-of-light weapons, including lasers and partial beams.

Kinetic energy weapons are the most promising so far, but there is a basic problem: They are far too heavy and expensive. The most promising developments are in rocket-fired homing vehicles and what are called "rail guns," huge space-based machines that fire projectiles.

Today's homing vehicles weigh 7,000 pounds. The weight would have to be brought down to a few hundred pounds—or, ideally, a pound or two.

Current rail-gun technology would require a 100-ton system in space—nowhere near practical. In addition, the guns, which would have to fire hundreds and perhaps thousands of projectiles, can fire only a few before they wear out.

"The major problem," said Rodney Burton of G.T. Devices Inc., an SDI contractor, "Is designing an overall system. It's still very much research."

Among directed energy weapons, the hottest current candidates are what are called "free electron lasers" and neutral particle beams.

Lasers require huge amounts of energy, and recent decisions have been made to concentrate on land-based systems that would send beams of high-energy light to mirrors based 23,000 miles in space. These mirrors, in turn, would reflect the beams to "battle mirrors" orbiting about 100 miles over the Soviet Union.

But at this point, the high-powered beams destroy mirrors rather than reflect off them, and no way has been found to focus or aim beams accurately.

According to James Swingle, of Lawrence Livermore Laboratories, it also is not clear whether the type of lasers that would be necessary would be able to destroy possible targets.

"We still have a lot to learn about actually destroying missiles," he said. "It is not very well understood. This is very much a research program. There are several key areas that will need a lot of work to determine whether this system will work or not."

Particle beam weapons would have to operate in space, and they are also far too heavy at this point. Nor has it been established that they can destroy missiles. "We can cook a pot roast with one," said Damon VioVanielli, of New Mexico's Los Alamos Laboratories, "but we cannot kill a booster [missile]."

COMPUTERS

Because any Star Wars system would have to be able to process information from sensors about thousands—or even hundreds of thousands—of objects in space in a matter of minutes, officials acknowledge that computers are a key if any system is to work.

The "hardware," or the actual computer machinery, needed to handle this volume of information is already in sight, most computer experts say. One of them estimated recently that the system would have to process 600 million to 1 billion computations a second, while current technology can manage 500 million computations a second.

But "software"—how to program the computers to meet the Star Wars challenge—is a problem, Strategic Defense initiative officials concede.

Gerold Yonas, chief scientist for the SDI, said the issue is "whether you can write enough software to do the problem. . . . And, more than anything else, you have to have a system that is tested and tested and tested again."

At this point, no one has figured out how to test such a system.

Nor has anyone figured out how to put the necessary computers, if they did work, into space, or how to protect them once they got there.

One scientist, David Lorge Parnas, resigned recently from an SDI advisory panel on the ground that reliable software could never be developed.

"We cannot trust it," he told a Senate Armed Services subcommittee earlier this month, because the software could never be tested under realistic conditions. And without testing and de-bugging, he said, any system would be subject to "catastrophic failure."

MYTH OF THE DAY: THE $171.9 BILLION MYTH

Mr. PROXMIRE. Mr. President, the Halls of Congress are filled with the sounds of heart-rending cries of pain, gnashing of teeth, and possibly even the rending of pin-striped suits. What is causing this joblike misery? The possibility of having to reduce—get that, reduce—the deficit to $144 billion.

You might think that this $144 billion had appeared suddenly, like something that goes bump in the night. But no, I looked in the Gramm-Rudman bill and there it is written large—$144 billion.

What, then, is causing this outpouring of grief? The realization that a comforting myth—the 1986 deficit will be about $170 billion—has gone with the wind. For years, Congress has passed budget resolutions and then quietly exceeded the deficit "ceiling" contained in those resolutions. And nothing horrible happened. But this year something horrible is in the offing.

That horror is that the Congressional Budget Office and the Office of Management and Budget, looking at reality instead of myths, estimated that the fiscal year 1986 deficit will be around $220 billion instead of that mythical $171.9 billion. Therefore, the deficit will have to be reduced not from $171.9 to $144 billion but from roughly $210 billion, after the sequeston order, to $144 billion. That is the cause of all the grief.

Note the villian in this drama. It is not the $144 billion target for the deficit in fiscal year 1987. Rather, it is the gross underestimation of the 1986 deficit.

What is behind this underestimation? Did something unforeseen happen? Not on your life. The causes of this higher deficit are:

Failure to pass the budget reconcilation bill, which added $8 billion to the fiscal year 1986 deficit.

Low-ball estimates of the cost of agricultural programs to the tune of $15 billion.

Defense spending which exceeded the unrealistically low targets in the budget resolution by $7.8 billion.

Additional domestic spending which exceeded the resolution by $1.4 billion.

Finally, rosey economic forecasts which were not met and which added $12 billion to the deficit.

Not one of these causes was unforseen at the time the budget resolution passed the Senate. A number of my colleagues stood on this floor and warned that the fiscal year 1986 deficit would be substantially above the projected $171.9 billion. But our voices went unheeded.

Now those smoke and mirrors estimates are coming back to haunt us. Despite all the crocodile tears being shed, it is about time for some reality in place of myths.

Mr. President, I yield the floor.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of routine morning business not to exceed 1 hour, with Senators being permitted to speak therein but not to exceed 10 minutes each.

THE 1985 CHICAGO BEARS: THE HALAS LEGACY LIVES ON

Mr. DIXON. Mr. President, early in 1920, A.E. Staley, a Decatur, IL, starch manufacturer and soybean entrepreneur, hired a young engineer from Chicago. This engineer was hired to make starch part-time and to help turn the good company football team into one of the best semiprofessional teams in the country. During the winter he made starch, met with other semipro teams to form the American Professional Football Association, and recruited new players.

After several years as an industrial sports team, Mr. Staley sold the team to the young engineer with the advice that he take the team to Chicago where he would be able to draw bigger crowds and make more money. The young man took that advice and thus was born the Chicago Bears professional football team. The young engineer was, of course, George Stanley Halas, the father of professional football.

As an owner, player, and coach, George Halas was responsible for a lot of what the NFL stands for today. He had high standards in his private and professional lives and he expected his players to maintain those same standards. George Halas loved the game of football and was always looking for ways to improve the game. Many of his innovations are still in use today.

He always tried to recruit the best players. Their names are famous: Red Grange, Sid Luckman, Gale Sayers, Dick Butkus, Mike Ditka or Walter Payton. George Halas knew that success was built on a combination of talent and desire, and that's why I think that Mr. Halas would be very proud of the 1985 Chicago Bears.

This year's players have talent, desire and that indefinable something that makes for a great professional athlete. They work hard together. They are a true team. Those of us from Illinois are indeed proud to be represented by these men, who have worked so hard and earned the respect of their colleagues in the NFL and of the whole country. When they were 4–0, there were nonbelievers. When they were 8–0, there were still people who were nonbelievers. The Bears didn't let that bother them. They just kept playing their own brand of professional football and now there can be no more nonbelievers.

I think it's fitting in this 20th Super Bowl year, that the team founded by the man who meant more to the growth of the National Football League than any other has won the world's championship.

George Halas isn't with us this year in person, but he is in spirit. It is the spirit of a man whose words were proved true again yesterday in New Orleans: "I do believe we gave a lot of people pleasure today. It's a great game, a great game."

REPORT ON U.S. POSITION AROUND THE WORLD

Mr. GOLDWATER. Mr. President, beginning in late December, I undertook an investigatory trip that took me to some of the key locations around the world where the United States has vital interests. I have reported to President Reagan my observations on the U.S. position in some of the most strategically important areas of the world and I have also sent a letter to Secretary of State Shultz relative to my concern about reported plans of our Government to provide a $500 million arms sale package to Red China.

The long and the short of my report to the President is that while U.S. Armed Forces are in good or excellent condition around the world, a disturbing perception exists in certain foreign countries that the United States is not living up to past promises to support the defense capabilities of our friends.

The point of my letter to Secretary Shultz is to protest reports of United States participation in seeking to enhance and modernize the military forces of Communist China without paying adequate attention to the threat this activity would pose to other nations in the far Pacific.

Mr. President, in the interests of communicating these first-hand observations to my colleagues and the American people, I ask unanimous consent that the text of the two letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, January 21, 1986.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: Two days after Christmas, I began a trip that took me around the world for the purpose of visiting not only our own bases and the bases of allies, but friends that we have around the world. I will keep this report as short as I can, even though that might be a little bit difficult.

Beginning in Hawaii, I found the Navy, the Army, and the Air Force to be in good condition. There are shortages, naturally. There have been shortages in spares throughout the military for a good number of years, but recently that situation has been improving. I was most disturbed by being briefed there to learn that about 800 different intrusions have been made by the Soviets over the Pacific with Badger and Bear bombers. Some of these incursions have approached the Philippines and, how far they have gone into the central Pacific, I don't believe anyone really knows.

From Hawaii, we traveled to Korea where I found our ground forces to be in excellent condition; likewise, our air forces. Our Ambassador to that country, Mr. Walker, is one of the most outstanding Ambassadors I feel that we have. The people in South Korea seem most friendly to the United States, but naturally, the people in North Korea do not quite hold that feeling. I inquired as to the possibility of disruption or attempted disruption of the Olympic Games in 1988 by the North Koreans, and I have to report to you that is a worry, although I am sure you have been briefed on this. It is not something that is worrisome to the point that they feel there are no solutions, but there is the fact that they can attempt troubles.

From there, I stopped very briefly in Japan, where I met Ambassador Mike Mansfield whom, as you know, is doing an outstanding job of representing our country, expressing our wishes and our desires. We had a very friendly chat, not long enough, but I just wanted to report to you of the excellence of his service.

Then, on to Taiwan. I know the great and high regard that you hold for Taiwan. Even though it was Mr. Carter, not you, who withdrew recognition from the Republic of China and transferred that honor to the Peoples' Republic on the Mainland, I feel that the agreements with Taiwan under the Taiwan Relations Act have not been and are not being fully complied with. Instead we seem to be bent on assisting with the modernization of Red China's military capabilities. I may hold hearings before the Armed Services Committee sometime later this spring to examine the arms assistance the United States is giving to the Mainland.

Taiwan badly needs new aircraft. They are flying the F-104 long given up by our own Air Force and by the German Air Force, and they are using the F-5 which is rapidly becoming antiquated. I repeat to you what I have said to you before, the F-20 would be an ideal solution to the aircraft problem of Taiwan, and I see absolutely no reason at all, under any agreement, that we cannot furnish this weapons system to the Taiwanese and to give them other equipment they badly need which I do not care to relate at this point.

I repeat to you, Mr. President, what I have often said. I don't think any of us or our children and possibly our grandchildren will even live to see the day the Peoples' Republic of China becomes a viable nation with power in this world. If they could ever rid themselves of the communist government, they could become, in my opinion, the strongest economic nation in the world, but I don't believe for one single moment that communism will leave those shores.

From there, we traveled to Singapore, where I had the real pleasure of meeting the Prime Minister and discussing very briefly his situation. As you know, he has put together an armed force of about 60,000 men, with some 200,000 reserves, and he is building an air force with the help of our own Air Force. There is an economic problem in that country, created by the reduced quantity of oil that we and other countries are buying. But I have to tell you, to travel the crowded streets, to try to get into the crowded stores, makes me question the depth or severity of that recession. As you know, it is a most delighful country, in fact one of the most beautiful in the entire world, and the fact that it sits at the mouth of the Straits of Malacca, which I believe is the only Strait left in this world not dominated by the Soviets or one that could be dominated very quickly, makes it become of immediate importance to us.

Our next stop was the atoll of Diego Garcia in the middle of the Indian Ocean and I would suggest that someday, if time permits, you pay a visit to this most interesting installation. What our country has been able to do with that very valuable spot on earth is almost unbelievable. I am happy to report that the leadership is good, the morale is good, and our decision to cooperate with the British in maintaining the space is, to me, one of the most vital strategic decisions our country has ever made.

The next stop was the little island of Masira off the coast of Oman, a place by the way, that I landed at once in a while during World War II. It is a desolate place. It is very difficult to find even a bush growing, but the British are there helping the Omanian Air Force and I believe everything is in good order. While it was not possible

for me to visit with the Sultan of Oman becasue of a little mixup in my scheduling, I was able to see the fabulous growth that has occurred in that country over the last fifteen years and it is almsot unbelievable. I feel that the Sultan is a good friend of ours. His first interests are his own country, the education of his people, and the righting of wrongs that were perpetrated by his predecessor, his father.

Next, we visited Saudi Arabia, first the large Saudi air base on the island of Dahran, where we had a thorough briefing of one of the most wonderful tactical installations I believe can be found anyplace on earth. There, at the level of the pilots and the squadron, I found a dissatisfaction that I found wherever we went over the fact that we have not carried out our promise to sell them more F-15 aircraft. This was borne out to me by a visit, in Riyadh, with the Minister of Defense, Prince Sultan.

Mr. President, there in Saudi Arabia, I found a disturbing repetition of matters I had been hearing wherever I had been, with the possible exception of Korea, that we, the United States, are not living up to our promises—the promises to supply weapons. Now, I know the great reluctance of the Congress to supply weapons to Arab countries because of the tremendous influence of Israel on the Congress but, nevertheless, if we are going to make promises, we must keep them, and I urgently appeal to you to use your power to see that these promises are kept. We are beginning to be looked upon, not just as a paper tiger, but as a country who makes promises only not to keep them. I fully understand the political power exerted on Congress to influence these decisions relative to the Arab countries, but I think we have to sit down and take a very modern, realistic look at this whole area that I call the Islamic Crescent, for if we do not stand by our friends there, we could find ourselves in serious trouble. This is a situation I would enjoy discussing with you at any time.

From Riyadh, we stopped briefly in Geneva to visit with several members of the government and to visit an old and dear friend of mine. The last two days of the trip we spent in London, where I visited the missile site at Greenham, and it is truly a remarkable bit of construction. It is impossible to describe it to you by letter but I am sure you are acquainted with it. I just wanted you to know that everything is in good shape there. The trip back across the Atlantic was, as usual, very interesting with a short stop at Shannon, Ireland, for the necessary replenishments.

In summing all of this up, Mr. President, I think we should start paying very close attention to the promises we make. I find, not too much, but a little bit of questioning about our country and its intentions. I am particularly impressed with one growing fact that grows stronger with every trip—the world is changing in more ways than we know and the world is becoming less and less dependent upon the United States.

I have seen, in my journeys, a tremendous amount of construction, none of it by American companies. I see jet airliners and aircraft not made in the United States. I have found practically no American cars abroad, so, Mr. President, I never thought I would live to see the day when that would happen, but I think it is high time that the policies you are advocating become adopted by not just the American Congress, but by the American people. If we are going to cut a road that we can follow with freedom and ease, we had better get back to the old idea that we work, and work, and work.

With all respect,

BARRY GOLDWATER.

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, January 22, 1986.

Hon. GEORGE P. SHULTZ,
Secretary of State,
Washington, DC.

DEAR GEORGE: Whether or not you will ever receive this letter will not prevent my writing it in the hopes that you might see it.

I have been made aware of the fact that the United States is considering selling to the People's Republic of China a number of rather sophisticated military items coming to about $500 million.

George, you know my feeling about Red China so possibly you can throw this in the prejudiced pile, but I cannot help but voice my complete disagreement with any decision such as the one that is being contemplated, if it is being contemplated.

I have often said that we will never see the day when the People's Republic of China is not a communist government. We will never see the day when they are important to us economically, strategically, or any other way, and by continuing to do the type of thing I am referring to in this letter, we are alienating South Korea, Japan, and most of all, Taiwan.

I know your feelings on Taiwan. I know the President's feelings on Taiwan, and you know my feelings on the same place. I don't want to see them threatened by the People's Republic of China, yet the sale of these items will do exactly that. Never in our history have we needed a friend as we need Taiwan today—not only Taiwan, but Korea, the Philippines, and the rest of the far Pacific countries that the People's Republic of China means no good to. I just want to strongly protest this gesture. I pray that you will not allow it to happen. It has been bad enough that we have recognized the People's Republic, so let's not go any further with this rather useless gesture.

With respect and best wishes,

BARRY GOLDWATER.

MILITARY REFORM IN AMERICA

Mr. GOLDWATER. Mr. President, to follow through on my remarks that I intended to introduce into the RECORD articles appearing in the Air University Review for September-October relative to reorganization of the military, I will today introduce another one, entitled "Military Reform in America," by Dr. Allan R. Millett.

Dr. Millett has taken more or less a historic view of military reform in America. It is extremely interesting reading and being a great believer in the engraving found on the steps of the Archives Building, "What is past is prologue, study the past," I think my colleagues would enjoy reading this, just to have a better grasp of why constant attention is necessary to keep every organization, whether it is military, business, or political, up on its toes, living in the present, not the present we necessarily like, but the present as it necessarily is.

I ask unanimous consent that this article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

MILITARY REFORM IN AMERICA

(Dr. Allan R. Millett)

Serving soldiers from time immemorial have recognized that dictated change does not always bring increased military effectiveness, the basic criterion they apply to reform. An unnamed soldier in the army of republican Rome recognized the problem:

"We trained hard . . . but it seemed that every time we were beginning to form up into teams, we would be reorganized. I was to learn later in life than we tend to meet any new situation by reorganizing; and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency, and demoralization."

The Duke of Cambridge, who witnessed the impulse for reform in Queen Victoria's England, summed up the thinking conservative's view of all reform, civil and military: "There is a time for all things; there is even a time for change; and that is when it can no longer be resisted." Whether the parent state is autocratic, revolutionary, or democratic, its armed forces are not likely to view military reform as an unconditional good. As Alexis de Tocqueville observed, however, the armed forces of democracies had a special problem because they were altered so radically in peacetime periods between wars. The change was not necessarily dictated by size but represented a fundamental challenge of the values of the standing forces. In times of peace, democracies ignored their standing forces, for they knew that in wartime the "nation in arms," for better or worse, would go to the battlefield with a new set of criteria for evaluating military leadership, organization, weapons, and tactics. Skeptical of the adaptiveness of peacetime forces, democracies would dictate that their military establishments would fight and change their institutional character at the same time.

Like many of his other observations in *Democracy in America*, Tocqueville had more to say about military reform in Europe as the seasons of American military reform may or may not coincide with belligerency. They certainly do not match the outcomes of wars. For example, in comparing the results of the Mexican War (1846-48) with the Spanish-American War (1898), one can conclude that both were smashing victories in terms of national objectives. The War with Mexico outstripped the War with Spain in its degree of mismanagement and the near perilous commitment of inadequate military power. Yet it was the 1898 war that set off more than a decade of land force reform, largely because it occurred simultaneously with the Progressive Era. Nor does the importance of the war dictate the degree of reform. The American Revolution gave rise to a generation of rhetoric but prompted little change to the militia system inherited from the colonial era. The War of 1812, in contrast, created the political environment that brought significant change to the War and Navy departments. Nor does military reform require the shock of wars badly won or lost that galvanizes public outcry. Reform in the twenty years before the Spanish-American War and World War II proceeded with minimal public attention, yet produced important changes in both the U.S. Army and the Navy.

If military reform is purposeful change that improves the U.S. Armed Forces (i.e.,

the product of public policy), it is not a phenomenon that occurs in either linear or cyclical fashion across time. Even "improve" can mean several things. By strictly military criteria, reform should increase the likelihood that the armed forces will perform their missions in war and peace with increased effectiveness, but reform in the United States seldom meets the standard of pure functionalism. Indeed, some of the most deep-seated notions of military change have included both explicit and hidden agendas that had little to do with military effectiveness in the direct, tangible sense. For example, at one time or another, the federal government has used military reform to encourage infant industry, build continental railroads, teach young males hygiene and physical fitness, further racial and gender integration in the larger society, and educate generations of civil and marine engineers. In fact, American military reform probably includes only one constant: it must not endanger civilian control of the military. In any event, the reason why military reform defies simple explanation is that it has worked in five distinct aspects of the institutional development of the armed forces:

The organization of the four services that comprise the armed forces and the network of civil, political agencies with which they work;

Technology;

The social composition of the armed forces and the set of formal regulations and informal mores that determine social relationships in the armed forces;

The nature and functions of officership in the armed forces; and

The development of operational doctrine and tactics for force employment.

Reform in each of these five areas has built its own set of historical patterns, and the causal relationship between reform movements has not been nearly so direct as some military reformers believe. In fact, it is closer to the historical experience to recognize that successful reform in one area may retard improvement in others. Such unanticipated outcomes have occurred so often that they explain some of the military predisposition to make change slowly, especially in peacetime. On the other hand, compartmentalized reform may have no effect at all outside its narrow sphere of influence. Thus, military reform in the United States refuses to fit neatly into a historical pattern that points clearly to reform's future.

ORGANIZATION

For their first century, the three existing services (the U.S. Army, Navy, and Marine Corps) developed a dual structure that gave their administrative headquarters in Washington centralized control. Operating forces in the field had little influence on service policy because the service civilian and military staffs controlled budgets and regulation writing, largely to satisfy civilian oversight. Effective power to run the Army rested with the department and bureau chiefs of the War Department. Their counterparts in the Navy's bureaus and the Marine Corps' small headquarters staff had similar power. In wartime, however, this system normally collapsed, since the standing procedures and limited numbers of personnel could not cope with mobilization. By the end of the nineteenth century, the services moved to close the line-staff division through the creation of service general staffs. The Navy began the process with the establishment of a General Board (1900) and the Office of the Chief of Naval Operations (1915), but the Army went further in centralizing military control with its War Department General Staff (1903). The Air Force duplicated the Army system in 1947, although Strategic Air Command established a semifeudalistic autonomy like that maintained by some portions of the Navy's support establishment. In the twentieth century, the general staff reform movement finally ensured that line officers would dominate their services and provide authoritative advice to their civilian superiors, but Congress has worked to counter this trend by providing staff access through the funding process. The career of Admiral Hyman Rickover is only the most notable example of technocratic insurgency.

The pressure for interservice collaboration—some coming from civilians, some from military officers—coincided with the growth of the general staff movement and in some ways competed with it. The Joint Board (1903) coped with such joint service responsibilities as coast defense, aviation policy, and amphibious operations, as well as advising the service secretaries on war plans. Replaced by the Joint Chiefs of Staff system in World War II, the Joint Board showed characteristics of joint planning that still prevail. The board had only an advisory role; it could not make decisions, which required active civilian participation and a willingness to decide. The joint planning system dictated that interservice disagreement would surface, whether the issue was the defense of Subic Bay or the management of military space programs. The organizational response to this condition after 1947 has been to increase the power of the Secretary of Defense and, much less significantly, the power of the Chairman, Joint Chiefs of Staff. Drawing from service experiences, the reformers have assumed that more centralization alone will improve joint collaboration. But service-level centralization rested on a different problem: the ascendancy of line officers in service planning within a system of civilian control. The debate on joint planning now focuses on force employment issues that require strategic guidance from political authority, something noticeably absent throughout the entire history of the general staff reform movement. During the one period in which that guidance came with a vengeance, the tenure of Robert S. McNamara as Secretary of Defense (1961-67), the entire system shuddered and eventually rebelled.

TECHNOLOGY

Since the earliest bureaucratization of the armed forces, technological change developed as a constant focus of military reform. Only the issue of technological adaptation has been a constant, for the pattern of change itself has varied. In the design of military vehicles and their different power plants, reform has normally wedded government designers and civilian innovators and producers, linked by a delicate balance of military need, psychic satisfaction, and monetary profits. Through World War I, this military-civilian collaboration produced sailing ships, the first ironclads and steel warships, Army wagons and their braying "power plant," railroad systems (most notably during the Civil War), automobiles and trucks, and airplanes. Although the pattern of collaboration has continued into the 1980s, it has been affected by the growing specialization of military vehicles, increased unit cost, and the length and complexity of the design and procurement process. Procurement, however, since the Frigate Act of 1794, has always been a political issue, which it will remain as long as Congress exercises its fiscal powers. Changes in military vehicles, an area of high need and high cost whether the vehicles carry weapons or simply provide transportation, will continue to be in the forefront of technological development because the mastery of time and space remains a central criterion for military effectiveness.

Ordnance development, on the other hand, has been made principally on the arsenal model, since military ammunition, cannon, and fusion warheads have little commercial appeal. Ordnance development had depended more on nation-against-nation military assessments of weapons effectiveness than military-civilian comparisons, which shape evaluations of vehicles. Except for the occasional intervention of individual inventors (e.g., John Browning and John Garand) into the arsenal system, ordnance development has been the province of military bureaucracies, which tend to balance promised increases in firepower with questions of tactical effectiveness and logistical feasibility. If there is any historical trend in weapons development, it has been that the capabilities of the platform vehicles have often exceeded the ordnance they carried, at least until the development of nuclear and terminally guided conventional munitions.

The change of military infrastructure reflects a different historical pattern. Military investments in construction (e.g., coastal defense fortifications, naval and military bases and airfields, civil engineering projects) has declined and been replaced by investment in electronic command and control systems with global and extraterrestrial reach. Like the development of vehicles, both military construction and electronics have depended on close military-scientific-commercial interaction. At an ever-accelerating pace, the application of electronics for military purposes has dictated a bond between commercial exploitation and military application that cannot be divided. The trend began with the development of the telegraph, radio, and the electrification of warships into the use or radars, computers, infrared sensing, satellite and aerial photography, and microwave/space relay communications. In a sense, the growing importance of military information processing and analysis reflects the more widespread shift of the American economy from industrial to service entrepreneurship. Whether the microchip and solid-state circuitry will prove as important a quantum leap in the effectiveness of military command as the vacuum tube remains to be seen.

Although ideally the adaptation of military technology might be separated from domestic partisan politics (as distinguished from bipartisan military pork-barrel politics), such has not been the case, largely because military procurement always seems to carry social and political benefits of little military relevance. Historically, military procurement has been used to stimulate cutting-edge industrial giants (in shipbuilding, steel, and aviation, for example), to encourage small businesses, to strengthen labor unions and minority employment opportunities, and to sustain a broad academic-industrial research and development infrastructure. Whatever the wisdom of this public policy, it politicizes technological reform, since both major political parties have populist factions that see corporation-governmental collaboration in terms of imperialist intervention abroad and economic exploitation at home. Despite the yearning of technologists, the concerns of the laboratory,

factory, and military user alone are unlikely to shape technological reform.

SOCIAL COMPOSITION, STRUCTURE, AND BEHAVIOR

Since the first ill-fated campaigns by the Army into the Northwest Territory and the first cruises of the frigate Navy against Barbary pirates and French privateers, American military commanders have argued that they could do much better in the field with better men. Those "better men" should not desert and should stay sober (at least on duty), obey superior officers and NCOs, and show some interest in training and physical fitness. They might even fight. In peacetime, the military recruiters did not have much success in drawing sturdy yeomen and fishermen or intelligent clerks into the ranks and crews, but throughout the nineteenth century they did attract pliant immigrants, wayward youths, and occupationally displaced workers into the peacetime services. Fortunately, they knew, the services would be more representative of the nation's male talent in wartime because volunteering and conscription (usually a subtle combination of both) would bring citizen-soldiers and citizen-sailors into the Army and Navy. These servicemen would not stay for the following peace. Indeed, until the twentieth century, they often went home legally even before the war ended. The services knew that these phenomena existed and tried to close the quality gap between the peacetime and wartime services. They are still trying.

Most personnel reforms designed to attract quality people—defined as trainable men in good health—came from the services themselves in collaboration with Congress. The reforms focused on "more"—more pay, more rank, more and better food, improved living conditions, more off-duty recreation, more health care and retirement benefits, more religion. They also focused on "less"—less corporal punishment, less issue alcohol, less menial work, less capricious discipline by martinet superiors. In terms of eliminating the unattractive aspects of service life, the armed forces often found themselves allied with unlikely co-reformers that ranged from the antislavery movement to legal rights groups. While they may have had the rights of servicemen in mind, civilian reformers had little interest in military effectiveness, having more concern in using the military as a laboratory for social experimentation.

The armed services had a good idea of what sort of people they did not want in the ranks, except under duress, Southern and Eastern Europeans, Jews, black Americans, Indians, Hispanics, Asians, and women all found entry and career advancement impossible or difficult at best, but as their political power grew in American society, so too did their influence on military personnel policies. In some cases, the armed forces moved more rapidly toward equal opportunity than civilian institutions; sometimes they did not. In any event, wartime service normally paved the way for better military careers, for the twentieth-century American military establishment could not defend its insular possessions or man the forces committed to forward, collective defense after 1945 without modifying its social structure. Enlisted service for a special group usually led eventually to admission to the officer ranks, sometimes at the insistence of civil rights groups with influence on Congress. With greater access to formal education and powerful formal and information sanctions against other than meritocratic advancement, minorities have demonstrated that increased military effectiveness may be compatible with social reform. The lesson, however, has not been painlessly learned by all parties or free of ambiguity.

OFFICERSHIP

Military professionals did not find the North American continent hospitable from the earliest settlement, as the travels of Miles Standish and John Smith attest. The low state of career officers had nothing to do with the requirement for their services, which the Indians and French kept at a high level. Little had changed by the end of the Revolution, as Hamiltonian Federalists learned when they tried to create an academy and cadre of professionals to train their "federal select militia."

The Navy had less difficulty finding a professional identity for its officers, since the occupation of mariner/ships officer had high status in a country that boasted a world-class merchant marine. Moreover, a Navy officer could show his commitment to the entrepreneurial seacoast culture by seeking prize-money like his privateering brethren and by his diplomatic efforts to expand American commerce abroad.

Army officers—except those who served as explorers, surveyors, and civil engineers—had little to offer the nation; even in wartime, they shared preferment with citizen-officers whose overall excellence and ability to recruit made them more valuable than regulars. Even the establishment of the Military Academy (1802) and Naval Academy (1845) did not advance the concept of special skill and public trust, for appointments to the academies soon became part of the political patronage system. Not until the post-Civil War period did academy graduates dominate the services, and then the Army had to accommodate officers whose volunteer wartime service drew them to a postwar career. Moreover, the larger society no longer ignored former wartime commanders (indeed, it elected some president of the nation), and it also rewarded a host of technicians, inventors, organizers, managers, and scientists who happened to wear uniforms.

The reform of officership in the U.S. Armed Forces largely came from within the officer corps itself and from officers who believed that peacetime education for wartime command defined military professionalism. Some of the officers' inspiration came from the debacle of the Civil War, some from foreign military practices, and some from the example of civilian professionals and businessmen.

By World War I, all the services had taken giant stops to establishing preparation for wartime command (or operational staff service) as the fundamental justification for military professionalism. The signs of reform were everywhere: in school systems for midcareer education, in the movement toward promotion by merit and board selection, by personal efficiency reporting, by the rotation through line and staff assignments. The giants of World War I and II emerged from this system and gave it its ultimate sanction. To their credit, the officers of the Army (Sherman, Upton, Schofield, Wood, Pershing, Marshall), Navy (Luce, Mahan, Sims, Pratt, Fullam, King), and Marine Corps (Barnett, Lejeune, Russell, Holcomb) who championed the professionalization of officership did so most often in the face of (at best) public apathy. They also persisted in the face of opposition from many of their fellow officers, who preferred to rely on their political contacts, bureaucratic expertise, and romantic notions of charismatic battlefield leadership. The career officer as "manager of state violence" owed little to civilian inspiration or assistance. As long as professionalization could be squared with access to officership based on education and performance and did not menace civilian control, political leaders accepted it.

The cold war, however, resurrected the dual definition of officership common in the nineteenth century, destroying the dominant identity of the officer-as-commander and rational planner of military operations. Officers explored space and the ocean depths, not just mountains and harbors; officers functioned as corporate managers and technicians in massive installations and nuclear laboratories, not railroads and gun factories; officers guided interservice and coalition commands and military assistance groups in foreign lands, not just negotiated with the Cheyennes and Fiji Islanders; officers moved freely throughout the national security bureaucracy rather than simply in and out of their service bureaus. In a sense, the power to serve the public good corrupted the core defintion of officership, setting the stage for a collective malaise triggered by the Vietnam War. Since much of the crisis in professionalism was rooted in the changed values that the officer corps itself had encouraged, there should be little wonder that officers have preferred to carry on the redemptive or redefining process themselves rather than allow Congress, academic gurus, and the media to prescribe ill-suited cures for their unique diseases of the spirit. The general social pattern of professions reforming others but not themselves has little to recommend it.

OPERATIONAL AND TACTICAL DOCTRINE

The general concepts and procedures that guide the employment of military forces in campaigns and battles emerged in the nineteenth century as the intellectual core of officership, an acquired mix of art and science. Unlike strategy, so dependent on transient political goals and subject to the whims of wartime leaders, operational and tactical doctrine required a beguiling mix of universal principles and situational adaptations that fused the capabilities of one's own forces and one's enemy as well as considered the physical environment in which those forces would meet one another. Moreover, operations and tactics demanded that a commander *do* something, not just think about it—a responsibility that required emotional and physical sturdiness, not just intellectual skill. In land warfare, battles moved from sequential concepts (the artillery fired, the infantry attacked or defended, the cavalry skirmished and then pursued) to the combination and integration of arms in simultaneous combat, complicated further by the advent of the airplane. At sea, single ship actions progressed to squadron, then fleet surface operations, then major naval campaigns that included submarines, fleet aviation, surface combatants, and amphibious forces. Fighting with allies in the world wars, in Korea, and in Vietnam further complicated the crafting and adjustment of doctrine, as did the introduction of the concept of deterrence based on the threat of nuclear weapons. The technical lethality of weapons in terms of the volume of fire such weapons could produce over ever-expanding distances presented additional problems to doctrinal reformers. Technological anxiety (will our weapons work as well as the enemy's?) reinforced or-

ganizational anxiety (will our system of command and logistics suffice when Murphy's Law replaces the current SOP?).

Operational and tactical reform in the U.S. Armed Forces has been largely the province of the officer corps, which has done a surprisingly good job in peacetime in changing the services' operational concepts. The old saw that the military refights the last war bears little reality to the process of adaptation, since much doctrine comes from a desire not to fight the last war again. Whether the reformed doctrine actually fits the next war is, of course, another matter, but the Armed Forces of the United States at least had the pleasure of fighting World War II almost precisely as they thought they would in terms of operational concepts, if not in terms of place of timing. Perhaps that experience was too satisfying.

Doctrinal reform has invariably created serious internal disputes within the officer corps of every service, a condition that makes intervention by outsiders especially unwelcome. Doctrinal adaptation is like a civil war, noteworthy for the high stakes and the intensity of commitment it spawns. Outside intervention may be important but is never fully welcomed, even by the winners. When doctrinal reform coincides with other types of reform, however important and well-intentioned, the effect on a service may be wrenching. The process is even more complicated when the doctrine requires interservice negotiation, in part because joint doctrine creates additional opportunities for extramilitary intervention. Thus, the development of air power doctrine in this century, especially when it became linked with nuclear weapons, proceeded with consistent messiness from the Billy Mitchell era through the "revolt of the admirals" in 1949 into the questions of control of helicopters, close air support squadrons, and military transports. Similar disputes have characterized the question of special operations forces, whether they were Marine raiders in the Pacific, Ranger battalions in the European theater, or Special Forces detachments in Vietnam.

The importance of operational and tactical reform is seldom in question, but no intelligent military leader can regard it as a pleasant experience. The only more perilous situation is to remain wedded to the status quo and find that adaptation must be built on the burning wreckage of one's materiel and the bodies of one's comrades.

The history of the U.S. Armed Forces provides many examples of adaptation across the entire range of organizational, technological, social, professional-occupational, and operational concerns that have drawn reformers' interest. But reform has seldom been driven by concerns for military effectiveness alone. Eventually, reform, because of its political nature, may achieve legitimacy with the nation's political leadership, but it also carries a cost—a cost extracted in time, money, interservice harmony, and the full faith and confidence that should characterize civil-military relations. Military reform is much like the very nature of republican government itself. As Federalist Congressman Fisher Ames observed, an autocratic government is like a beautiful sailing ship, fast and steady in a fair breeze, but prone to floundering in foul weather. A republic is like a raft, ungainly, unsightly, and nearly uncontrollable even in calm waters. But it never sinks, even in a gale. Nevertheless, one's feet are always wet.

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. METZENBAUM. Mr. President, what is the pending business?

The PRESIDING OFFICER. The Senate is in morning business.

Mr. METZENBAUM. Mr. President, I have no desire to determine what will take place on the floor of the Senate. That is not my responsibility. However, we have all been advised that as of today we would be back on the Conrail bill. I am wondering what is the intention of the leaderhsip as far as going back on the Conrail bill. Although I love the Halls of the Senate, I am not just anxious to sit here and twiddle my thumbs. If the manager could indicate what his intentions are, the Senator from Ohio would appreciate it.

Mr. DANFORTH. Mr. President, the manager of the bill is certainly willing to go forward this afternoon. I know the Senator from Louisiana had an amendment which he was going to offer. I thought he was going to offer it today. It is my understanding that he will not be prepared to offer it today.

There is a possibility that the senior Senator from Illinois might have an amendment to be offered today. We are trying to ascertain that.

Mr. President, I am perfectly prepared to go forward with the bill today, if Senators would like to either offer amendments or make speeches.

Mr. METZENBAUM. Mr. President, the Senator from Ohio is prepared to go forward today, as soon as the manager of the bill or the majority leader puts us back on the bill. Does the manager have anything further he would like to say at this time?

Mr. DANFORTH. I am not prepared right now, but I will have some comments when we get back on the bill. I anticipate that will be in something like 20 minutes or a half-hour.

Mr. METZENBAUM. Could we tentatively agree that at about a quarter to 2 we will reconvene on the bill and the Senator and I can proceed to discuss certain matters?

Mr. DANFORTH. That may very well be.

Mr. METZENBAUM. Mr. President, I thank the Senator and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONCLUSION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

CONRAIL SALE AMENDMENTS ACT OF 1985

The PRESIDING OFFICER. The clerk will report the pending business.

The legislative clerk read as follows:

A bill (S. 638) to amend the Regional Rail Reorganization Act of 1973 to provide for the transfer of ownership of the Consolidated Rail Corporation to the private sector, and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Danforth Amendment No. 1437, in the nature of a substitute.

Mr. DANFORTH. Mr. President, at approximately 3 o'clock, it is my intention to propose a unanimous-consent request which would have the effect of treating my subsitute amendment to S. 638 as an original text for the purpose of further amendment.

I do this for several reasons. First of all, the Senate customarily treats substitute amendments as original text for the purpose of further amendment in order to simplify the amendment process. Second, since my amendment is a substitute amendment, if it is agreed to there would be no text of S. 638 as it was originally introduced for the Senate to consider. The original S. 638 has been modified as a result of extensive committee deliberations. These changes, which reflect a number of concerns raised against the original Conrail sale proposal, are all contained in my substitute amendment. Therefore, it is pointless for the Senate to consider what is outdated text. The old text does not enjoy any support either by proponents or opponents of the Conrail sale to Norfolk Southern and does not require Senate consideration.

I would urge my colleagues to agree to this request. It has no material impact on their ability to amend my substitute which will continue to be amendable in two degrees as the original S. 638 would have been.

Mr. METZENBAUM. Mr. President, I will address the body on some of the problems with respect to the Conrail legislation and then at the appropriate time I will also discuss somewhat the procedures under which we are operating.

Mr. President, diversions of rail traffic from Eastern and Midwestern rail-

roads to the giant Norfolk Southern-Conrail combine will have profound implications for rail competition in the region.

What will be the effect on those railroads?

I point to the report of the U.S. Railway Association, which states as follows:

> Carriers both large and small will be affected by diversion. CSX Corp., with its major overlap of network with Conrail/Norfolk Southern, will suffer significant loss in absolute dollars. Smaller carriers, such as Grand Trunk Western; Illinois Central Gulf; Chicago and North Western; and Soo/Milwaukee will lose substantial volumes of traffic in relation to their traffic bases.

USRA states that the larger carriers in the West will not escape the effects of diversions.

Norfolk Southern estimates that traffic diversions to its system will total $262.4 million.

But CSX estimates that it will lose $400 million of business just from its own lines.

The Midwestern regional railroads are afraid they will be eaten alive by the Norfolk Southern-Conrail giant, and after reading the USRA report, I agree entirely with them.

There is a distinct possibility that traffic diversions to Norfolk Southern-Conrail could so weaken the financial position of the Midwestern regional carriers that Federal intervention will be necessary to prevent a collapse.

It is, indeed, ironic that the administration, in its rush to unload Conrail, is setting the stage for a repeat of a regional rail collapse on a scale comparable to the Penn Central fiasco.

And how do the taxpayers fare in this sale? Not very well.

According to the Congressional Budget Office, the Federal Governmment would be paid about $1.4 billion for the sale of Conrail. But we would lose about $400 million in tax revenues and $800 million in the future interest and dividend payments between now and 1990. I will return to the same subject subsequently in order to point out the President's comments in connection therewith and the facts as I understand them to be.

The losses I have just mentioned according to the CBO do not take into account what we will lose in interest and dividends between 1991 and 2011, when the debt becomes due.

The Federal Government under this scheme would get $200 million for an asset whose net worth has been calculated at over $3 billion, and in which the taxpayers of this country have invested over $7 billion.

Again, this is how this would happen.

The amended and restated financing agreement between the U.S. Railway Association and Conrail requires Conrail to make payments on debentures and preferred stock held by the Government once its cumulative net income exceeds $500 million. CBO estimates that if the United States were to retain ownership of Conrail, payments to the Federal Government would begin in 1988. These payments would be slightly less than $300 million in each year, totalling approximatley $800 million between 1988 and 1991.

This debt to the Government will be cancelled under the proposed sale agreement, or the memorandum of intent, as it is called, between the Department of Transportation and Norfolk Southern.

The $400 million loss of tax revenue will result largely from Norfolk Southern's ability to utilize Conrail's tax breaks.

But that is not all.

The memorandum of intent also contains a number of tax warranties which guarantee to Norfolk Southern the manner in which the Internal Revenue Service will handle the sale transaction for tax purposes.

That, in and of itself, makes this a most unusual memorandum of agreement. To provide how the IRS is going to handle a particular transaction is most unusual, if not unique.

The Department of Transportation claims that there is nothing in the memorandum of intent that varies from normal tax procedure. But this is simply not so.

For example: Paragraph 4 of the memorandum states that:

> The cancellation by seller on the date of closing of any interest of seller in any debt, including accrued interest thereon and in preferred stock, including accrued and unpaid dividends thereon of Conrail held by seller shall not result in the recognition of gross income for the purposes of the code.

Simply stated, that mumbo-jumbo means that the $800 million Conrail debt from which Norfolk Southern will be excused will not be recognized as income to Norfolk Southern. Therefore, Norfolk Southern will not have to pay taxes on it.

This is not normal tax procedure.

Suppose the Internal Revenue Service does not buy this argument, and decides that the forgiven debt is, in fact, income, and should be taxed as such.

Well, the memorandum takes care of that problem, too. It indemnifies Norfolk Southern against just such an IRS decision. If the IRS does not go along with the deal, the Department of Transportation will pay Norfolk Southern's tax bill.

Page 3, paragraph 4 of the memorandum specifies that:

> Conrail's net operating loss carryforwards shall not be available for carryover to taxable years beginning on or after the closing.

But there is an exception:

> Except to the extent such carryforwards are attributable solely to reductions required by the Internal Revenue Service in the adjusted tax basis of Conrail's depreciable or amortizable assets as reflected in its U.S. corporation income tax return for the taxable year ending on the closing.

When somebody says that these are not special provisions, it is because they have not seen many other agreements or because they have not read this one, because these are very special provisions.

The sale agreement guarantees to Norfolk Southern the value of Conrail's assets for tax depreciation purposes. However, if the Internal Revenue Service objects to this arrangement, the provision of the memorandum that I just read permits Norfolk Southern to make up the lost tax depreciation benefits by retaining Conrail tax loss carryforwards of a comparable value.

Not bad. In fact, very good, if you are the buyer, but not very good for the U.S. Government.

Here is another unusual warranty.

The IRS may not adjust the tax value basis of Conrail's assets after closing of the sale because, on page 4, paragraph 6(E), subparagraph 2, the memorandum states:

> The adjusted basis at closing of Conrail's and its affiliates' depreciable or amortizable assets shall be as shown on its U.S. corporation income tax return for the taxable year ending on the closing (of the sale), determined without extraordinary departures from the methods of prior years, and said basis as of closing shall not thereafter be increased or decreased as a result of any adjustment to a taxable year of Conrail ending on or before the closing.

I am afraid the American people do not know what we are talking about. But when all is said and done, it winds up to one of the most massive giveaways and specially protected deals that probably the U.S. Government has ever entered into. As a matter of fact, it reminds me of those deals we talked about a couple of years ago, the ship leasing deals, in which the Government guaranteed the tax aspects of the deal and verified the tax application of it. With respect to those deals, Congress has now seen fit to say that we will not look favorably on them and approve them, and this is one we should not.

From the beginning, the value of Conrail's assets for tax depreciation purposes carried over from the old bankrupt railroads. That is normal tax procedure. However, nobody knows whether the carryover basis is actually correct since Conrail has never been audited by the Internal Revenue Service.

By prohibiting the Internal Revenue Service from adjusting the tax value basis of Conrail's assets, the memorandum guarantees that Norfolk Southern will not be harmed by any audit of Conrail's asset that the IRS decides to undertake in the future.

How far we have gone in protecting the buyer and being indifferent to the

concerns of the rest of the taxpayers of this country.

The list of special tax warranties goes on, and the sad fact is the Senate Finance Committee never even had a chance to consider them. The bill was not referred to that committee.

At my request, the Senate Judiciary Committee, on which I serve, conducted 2 days of hearings on the sale proposal even though we did not have the bill before us.

The testimony offered during those hearings clearly showed that this is a truly incredible deal for Norfolk Southern.

But it is a raw deal for the taxpayers and for the Northeast-Midwest section of the country.

The price is totally inadequate.

The tax breaks and warranties cannot be justified.

And, there is no indication that the new rail network will provide the level of rail service currently enjoyed by shippers and communities throughout the Northeast and Midwest.

The sale has the marks of a monumental giveaway and I intend to fight it to the end.

But I think we ought to discuss further the misinterpretation and misunderstanding that apparently exists at the White House in connection with this deal.

Mr. President, on January 23, the President of the United States announced in a meeting before a group of business leaders that the sale of Conrail to Norfolk Southern is a test of congressional will to cut Federal spending.

The President said, and I quote:

> This is a test to see if Congress is serious about meeting the challenge of Gramm-Rudman-Hollings, (to) start scaling back the scope and size of Government. If we're to bring down deficit spending, what a better place to start than by trimming away those costly activities like Conrail, which the Government should never have been involved with in the first place.

End of Presidential quote.

I regret to tell my colleagues that the President is seriously misinformed.

The Federal Government has not spent one thin dime on Conrail since 1981.

In fact, in 1981, Conrail earned $39 million.

In 1982 Conrail earned $174 million; in 1983 Conrail earned $313 million; in 1984 it earned $500 million; and in 1985 it earned $440 million.

In other words, Mr. President, Conrail is about the only Government asset that actually makes money.

Yet the President wants us to sell it. Or, more accurately, he wants us to pay Norfolk Southern to take it from us.

What a sweetheart deal for Norfolk Southern this transaction would be.

For $1.2 billion, Norfolk Southern will receive $800 million in cash, they will take control of a pension fund that has a surplus of $250 million and they will be in a position to write off $3.5 million of the capital assets of this railroad.

But, notes the President, the Government will receive $1.2 billion in cash.

Oh, what a deal that is for the Federal Government.

According to the Congressional Budget Office, the Government will lose that entire $1.2 billion between 1986 and 1990 because of Norfolk Southern's ability to depreciate Conrail's assets, and because the Government will forego interest and dividend payments that a federally owned Conrail would pay the Government beginning in 1988.

Mr. President, that last sentence is so important to what we are talking about that I am going to take the liberty of repeating it exactly as I read it the first time, because it is the critical issue on this entire subject.

I quote:

> According to the Congressional Budget Office, the Government will lose that entire $1.2 billion between 1986 and 1990 because of Norfolk Southern's ability to depreciate Conrail's assets and because the Government will forego interest and dividend payments that a federally owned Conrail would pay the Government beginning in 1988.

In testimony before the Senate Judiciary Committee, on April 2, 1985, Treasury Department officials promised to provide the committee the Department's analysis of the tax implications of the Conrail sale. After 10 full months of delay, from April 2, 1985, after the bill was already pending before the Senate, the Department finally saw fit to provide us their report.

What does their analysis say?

It says that selling Conrail to Norfolk Southern will cost the Government $174 million in lost tax revenues between 1986 to 1990.

I believe that these figures are conservative at best. But even assuming that they are correct, the figures are just another reason why we should not enact this legislation.

In each year starting with 1986, this transaction will reduce the amount of revenues collected by the Federal Treasury.

The President's own Department of the Treasury admits that this sale is a revenue loser.

And, therefore, this bill violates section 311 of the Budget Act as amended by Gramm-Rudman-Hollings. It is, in other words, a budget buster.

How absurd. How unbelievable. The only asset that this Government has that makes money, that reduces the Federal budget deficit, and what are we asked to do?

We are asked to pay someone to take it off our hands.

We are asked to bust the budget.

We are asked to violate Gramm-Rudman-Hollings as the first order of business before this session of Congress.

I believe the President of the United States ought to consider the views of his own Treasury Department before he announces that selling Conrail to Norfolk Southern is consistent with "meeting the challenge of Gramm-Rudman-Hollings," and balancing the Federal budget.

The fact is, it is not consistent with the Gramm-Rudman effort. This proposed sale is a blatant giveaway of valuable Government assets and it will create one of the largest tax shelters in history.

This issue before us, this Conrail bill, is the acid test for Gramm-Rudman. If we pass this bill, if we give away $174 million in revenues, Gramm-Rudman-Hollings is dead.

Therefore, Mr. President, I raise a point of order that the bill violates section 303 of the Budget Act as amended by Gramm-Rudman-Hollings.

Mr. DANFORTH. Mr. President, pursuant to section 904 of the Congressional Budget Act, I move to waive section 303 of that act for the consideration of S. 638 and any amendment thereto.

Mr. METZENBAUM. Mr. President, this is a debatable motion?

The PRESIDING OFFICER (Mr. MCCONNELL). The motion made by the Senator from Missouri is debatable.

Mr. METZENBAUM. Is debatable?

The PRESIDING OFFICER. Is debatable.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. METZENBAUM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METZENBAUM. Mr. President, we now have the Senator from Missouri making the motion, which he is entitled to make, to waive the Budget Act. But the issue is simple. The issue is whether or not the U.S. Senate, in its first major act with respect to legislation, is going to waive the budgetary constrictions that we ourselves have enacted into law. Are we going to stand here and say that Conrail is so important that we do not worry about Gramm-Rudman-Hollings; we do not worry about the Budget Act; we are only concerned about Conrail, and the first thing we are going to do of any real importance this year is to waive those budgetary constraints?

I say to my colleagues: Are you prepared to go back home, wherever that home is, and say you have been making speeches about balancing the budget and, at the very same time, the first thing you are going to do, the first important vote is going to be waive, waive the budget? Do that, my colleagues, and you will make a farce out of the entire budgetary process. You will say that we have made the speeches but, when push comes shove, we are prepared to waive it.

Now, it does not matter that it is Conrail or anything else. It indicates that there is no lack of resolve, if you accept and approve the motion of the Senator from Missouri to waive the budgetary restrictions.

What possible difference does it mean to have these restraints? What kind of hypocrisy will it be if we decide that the very first thing we do in the U.S. Senate of any consequence is to waive Gramm-Rudman-Hollings? I think that is something that every Member of this body has to think about. It does not matter whether you are for Conrail or against Conrail. It does not matter what your political philosophy is.

I voted against Gramm-Rudman-Hollings. I did not think it made any sense.

I see the distinguished leader of the Senate coming on the floor and I point out to him that the issue is a simple one: Is the first act that the U.S. Senate is going to perform going to be to waive the provisions of Gramm-Rudman-Hollings? You will make it an editorial field day across the country. The columnists and the cartoonists and the editorial writers are going to say that the Senate indicated its strong resolve when they took a bill such as the Conrail bill, where we have $200 million more that will be available if we sold it to somebody else, and there is probably a lot more available if we would just go to secret bidding—the real question is: What is this body up to; why would we possibly want to waive the provisions of the Gramm-Rudman bill?

Now there is no secret about the fact that the reason that the motion was made is because the Senator from Ohio raised the point of order that it was in violation of Gramm-Rudman-Hollings; it was in violation of section 303.

I will pose a parliamentary inquiry to the Parliamentarian or the Chair. Is it not the fact that, had there not been a motion to waive the rule, the Senator from Ohio's point of order would have been well taken?

The PRESIDING OFFICER. Since the bill affects revenues in a fiscal year for which there is no concurrent resolution on the budget, the bill would violate section 303 of the Budget Act.

Mr. METZENBAUM. I thank the Chair. The bill would violate section 303 of the Budget Act. And so we have a motion to waive the rule, waive the rule so we can go ahead and violate section 303 of the Budget Act.

How many of my colleagues who fought so hard—and there were many of you—who fought so hard to enact the Gramm-Rudman-Hollings bill are going to be able to walk off the floor, if you support the motion of the Senator from Missouri, and say, proudly, "The first thing I did in the U.S. Senate this year of any real consequence was to violate section 303 of the Budget Act," parenthetically, called the provisions of the Gramm-Rudman-Hollings Act? I do not think that this body is prepared to take that action.

I cannot believe that there are 51 Members of this body who are going to vote in the affirmative to waive the provisions of the very law that we just spent almost an entire year seeing to it that it became the law and the President of the United States has indicated his approval by signing it into law.

Mr. President, I have indicated to my distinguished colleague from Missouri that I think it would be unfair, both from his standpoint and my standpoint, and in fairness to our colleagues who have been assured there would not be a vote on this matter today, so I inquire of him as to whether or not he would agree to a unanimous consent request that, when we return tomorrow, when we get back on the bill at 2 o'clock, there be 2 hours of debate, evenly divided, with respect to this motion and that there be a vote in connection with his motion at 4 o'clock and that the yeas and nays would be ordered.

Mr. DANFORTH. Mr. President, I have discussed this matter with the majority leader. He has suggested 3 o'clock. He believes that, in view of the fact that it is possible that a motion to recommit will be made, several amendments will be offered and there will be rollcalls and he is anxious to get the bill moving forward, he suggested perhaps we vote at 3 o'clock. That would be suitable for me. I would suggest that, if we come in at 2, an hour, equally divided, would perhaps give us an opportunity to air the issue.

Mr. METZENBAUM. Mr. President, I am not prepared to make an issue of whether it is 3 o'clock or 4 o'clock. I do understand we have been requested on this side of the aisle to run a hotline to see whether or not there is any problem. I, therefore, suggest the absence of a quorum.

Mr. DANFORTH. Will the Senator withhold?

Mr. METZENBAUM. Yes, of course.

Mr. DANFORTH. Mr. President, I have two parliamentary inquiries to put to the Chair. First, the Senator from Ohio refers to section 303 of the Budget Act as modified by the Gramm-Rudman-Hollings provision. Does Gramm-Rudman-Hollings modify section 303 of the Budget Act?

The PRESIDING OFFICER. Section 303 of the Budget Act is not modified by the legislation referred to as Gramm-Rudman-Hollings.

Mr. DANFORTH. I thank the Chair.

Second, Mr. President, the Senator from Missouri last Friday offered a substitute for S. 638. Earlier today, before the Senator from Ohio made his point of order, I stated that it was my intention to ask unanimous consent that the substitute be agreed to and treated as original text.

Mr. President, let me ask first of all: Is the point of order of the Senator from Ohio made against the underlying bill, or is it made against the substitute?

The PRESIDING OFFICER. The point of order was made against the underlying bill.

Mr. DANFORTH. Mr. President, the Chair has stated that the point of order would be well taken against the underlying bill. But I ask the Chair: Would the point of order be well taken against the substitute?

The PRESIDING OFFICER. In response to that question, the Chair would like to clarify an earlier response to an earlier inquiry. It is the understanding of the Chair that the point of order was made on grounds that the underlying bill affects revenues. Section 303 of the Budget Act was affected by Gramm-Rudman-Hollings to apply to credit, and the Chair wishes to correct his response to the Senator from Missouri in that respect.

As to revenues, the substitute offered by the Senator from Missouri would not affect revenues in fiscal 1987, and, therefore, would not be subject to a point of order under section 303.

Mr. DANFORTH. Mr. President, let me clarify for the Senate what the position is as I understand it that is taken by the Senator from Ohio.

The bill itself—the underlying bill, S. 638—is a complex piece of legislation, and provides among other things some tax provisions; that is to say, the bill incorporates within it the basic agreement between Norfolk Southern and the Department of Transportation. That basic agreement included a forgoing by Norfolk Southern of various tax advantages that it would otherwise have, including the net operating loss carryover, and the investment tax credit carryover. Those provisions in the agreement were embodied in the bill itself. And I believe there were several other—I think it would be fair to say—minor provisions of tax law that were incorporated into the bill.

Therefore, Mr. President, the Senator from Ohio is quite correct as a technical matter: S. 638 not only

would violate section 303 of the Budget Act, but it would in fact violate the Constitution because it is a Senate bill. And it includes within it certain tax provisions. But, Mr. President, it is the suggestion of the Senator from Missouri that the underlying S. 638 should no longer be before the Senate.

What we have done, among other things, in the substitute is to provide that no tax provisions, however technical, shall take effect in this legislation until the House bill is passed. Therefore, as the Chair has clearly stated, the point of order that has been raised by the Senator from Ohio would not lie against S. 638 as it would appear if the substitute were agreed to.

Mr. President, the basic question that is raised by the Senator from Ohio when we get beyond the technical fine points—and I think that he is really insisting on technical fine points here—is the question of budget consequences. My view is exactly the opposite of the Senator from Ohio. My view is, from the standpoint of budgetary consideration, the arguments are all for the sale. The Senator from Ohio in making his argument does not argue for the Morgan Stanley sale. He does not argue for some alternative form of selling the railroad. He says:

> Let us keep it. Let us keep the railroad. Let us renege on the decision of the Congress in 1981. Let us renege on the agreement by the Department of Transportation. Let us forget about the whole thing. We have climbed this mountain now for 6 years. Let us climb right back down again, and not have any sale at all.

Now, he claims by not having any sale at all somehow that would have positive budgetary consequences. I do not see why. Mr. President, we did not do much last year. We did not do much in solving the problem of the deficit in the Federal budget, but one of the things we agreed to—I thought when we passed the budget resolution itself—was we were going to sell Conrail, and pick up $1.2 billion in proceeds from that sale. Those are the proceeds that would be coming in. They would be scored accordingly pursuant to the budget resolution which we passed last year.

Now the Senator from Ohio says, oh, forget about the $1.2 billion that we agreed to. Well, if we forget about it, Mr. President, where are we going to go? Where are we going to get it? We are going to be fighting the battle of the budget all year. The majority leader can hardly wait to get this bill off the floor so we can go on with other work that we have to do in the Senate. We are going to be tied into knots by the budget. If we give up $1.2 billion in proceeds, where is that money going to come from? Defense, discretionary appropriations? That is just a question of proceeds.

I do not think that the ownership of Conrail by the Federal Government has been any great financial boon to Uncle Sam. In fact, between 1977 and 1984, the Federal Government spent $3.4 billion in subsidies for Conrail's operations and capital investments, and in addition to that, Uncle Sam paid out a little over $600 million to Conrail employees whose jobs were eliminated.

Mr. President, if the Senator from Ohio wants to argue the technicalities of whether there are tax provisions in the underlying bill, I concede that he is right. He is right. Let us correct that. That is what I suggest. Let us correct that. Let us adopt the substitute. We can solve that problem. We can solve it. The Parliamentarian tells us we can solve it, the Chair tells us, simply by adopting the substitute which does not make any substantive changes in the bill. It is merely a technical substitute. We can solve that problem if he is making a technical point, and if he is making a debater's point.

But if he is making the point the overall health of the Federal Treasury, if he is making the argument about the whole point of Gramm-Rudman-Hollings, then, Mr. President, the worst thing we can do is to do nothing. The worst thing we can do is to retain ownership of Conrail.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. PRESSLER. Mr. President, I rise today to offer an amendment to ensure competition between the proposed Norfolk Southern/Conrail Railroad and the many smaller railroads which could be jeopardized by such a merger. I will explain why this amendment is needed, its purpose, how it will work, and the rationale behind each of its specific substantive provisions.

WHY THE AMENDMENT IS NEEDED

To state it very simply, this amendment is needed to protect small and regional railroads from being driven out of business as a result of Norfolk Southern's monopoly-like market position. Norfolk Southern would have the ability to devastate smaller railroads through traffic diversions. Let me explain:

Norfolk Southern and the Department of Transportation have argued before our Commerce Committee that: First, any diversion of traffic from small and regional carriers as a result of this merger would be slight; and second, the traffic that is diverted would be diverted as a result of increased efficiencies realized by the merger rather than because of the exercise of market power. They maintain that there will still be strong, effective competition for transcontinental traffic. But it is my fear that the essential element of effective competition will be absent in S. 638. This is so because Norfolk Southern will have a monopoly in the Eastern part of the United States.

Because of its monopoly position in the East, Norfolk Southern will be able to divert transcontinental traffic from its present route to one which goes through a greater percentage of Norfolk Southern track, thereby assuring it a bigger percentage of the joint rate. This could be done even though a more direct and efficient route is available because Norfolk Southern will be able to dictate the route through which this transcontinental traffic will enter its territory. It cannot do that today because it competes with Conrail for the traffic within its territory. After the merger, it will control all effective access to the Eastern markets. There is no evidence that Guilford or anyone else will be able to provide the kind of competition to prevent this from happening.

If the essential element of effective competition is absent in S. 638, the amendment I am introducing will be critical to the very existence of many smaller railroads within and outside the Norfolk Southern/Conrail region. If I am wrong and the competitive element is there, this amendment can never go into effect. The amendment specifically provides that the diversions must result from the exercise of market power by Norfolk Southern before it can be utilized.

Indeed, if the Department of Transportation is correct in its estimates, the amendment can never be used outside the NS/CR region. So I sincerely hope that the Department will support its passage. Last Friday, I sent a letter to the Secretary of Transportation asking for the Department's support. I shall have the entire text of that letter printed in the RECORD following my remarks, but would like to quote from relevant parts of it here:

> Enclosed for your consideration is a copy of an amendment I will be offering to S. 638, the Conrail Sale Amendments Act. The purpose of this letter is to seek your support for its successful passage in the Senate.
>
> As you know, my major concern with S. 638 is the potential adverse impact that a merged Norfolk Southern/Conrail Railroad System would have on the railroads in the midwest and other parts of the country outside the immediate Norfolk Southern/Conrail region. Since the Department of Transportation has estimated that no railroad outside this area will suffer traffic diversions in excess of 2 percent of present traffic, it is my hope that you will be able to support the amendment.
>
> We have chosen the three and one-half percent diversion figure because it represents the point at which the actual existence of some of these smaller railroads is threatened. I trust you will find this percentage figure to be extremely conservative as it would require diversions in excess of 200 percent of the department's "most liber-

al case" estimates before it could be used by railroads outside the NS/CR region.

If for any reason you find the three and one-half percent figure to be out of line with the department's estimate, I would be happy to substitute it with the actual percentage figures contained in the department's June 28, 1985, letter to Chairman Danforth of the Senate Commerce, Science, and Transportation Committee.

THE AMENDMENT'S PURPOSE

The purpose of the amendment is quite simple. It is to protect small and regional railroads from unfair market power and other anticompetitive pressures which could be exerted by a combined NS/CR railroad. The rail system of the West and Midwest, as well as the smaller Northeastern carriers, should not be sacrificed for the sole benefit of a single railroad.

The return of Conrail to the private sector represents the last chapter in the Federal Government's rescue of the Northeast rail system after the Penn Central and six other railroads collapsed in 1970. This amendment is designed to ensure that it is not the first chapter in the collapse of the rail system in the Midwest or other parts of the country. It would be ironic indeed if, by finally turning this system over to the private sector and getting the Federal Government out of the railroad business, we set the wheels in motion for larger railroad failures in other parts of the country, thereby starting the process all over again.

This amendment is the result of a sincere desire to avoid a potentially catastrophic situation with railroads in other parts of the country. It is not intended to be, and certainly should not be, a killer amendment of any kind.

HOW THE AMENDMENT WILL WORK

Mr. President, this is a relatively brief, straightforward, and simple amendment. It is approximately three pages in length and the substantive provisions are as follows:

First, the amendment permits smaller railroads to petition the ICC to seek relief from diversions of traffic from their lines that are attributable to the acquisition of Conrail by Norfolk Southern. The conditions precedent to seeking relief are: First, that the petition be filed within 10 years of the consummation of the sale of the interest of the United States in the stock of Conrail to Norfolk Southern; second, that in calendar 1985 the petitioning railroad have had rail operating revenues less than $1 billion; and third, that the petitioning railroad allege the diversions result from the acquisition of Conrail by Norfolk Southern and the exercise of market power by the consolidated Norfolk Southern and Conrail system—the consolidated system.

Second, the ICC will not be required to proceed with the petitioning railroad's claim unless it finds that the petitioning railroad, as a result of the exercise of market power by the consolidated system, has suffered either: First, a diversion of traffic equal to or greater than 3½ percent of the number of carloads handled by the railroad in calendar 1985, or second, a rerouting of traffic that has resulted in a loss of revenues from such traffic equal to or greater than 3½ percent of the rail operating revenues of the petitioning railroad in calendar 1985.

Third, if the ICC finds that the traffic diversion have occurred as a result of the exercise of market power, they will then determine the divestitures or conditions necessary to eliminate the market power of the consolidated system, and to provide the petitioning railroad fully competitive connecting access to each major rail market.

Fourth, the amendment requires that any divestiture required shall be made at prices to be agreed by the Norfolk Southern and the divestee. In the event that the parties cannot agree on a price, the Commission is directed to set a price for the divested properties. In setting a price the Commission is directed not to take into account any value of the divested properties that results from the market power of the consolidated system in any rail market.

And finally, the amendment requires that a final decision be made within 1 year of the date of filing the petition, and that the ICC follow the normal Administrative Procedure Act and Interstate Commerce Act guidelines.

Mr. President, I have prepared a full section-by-section analysis which I shall submit for the RECORD in its entirety.

RATIONALE BEHIND CERTAIN PROVISIONS

Finally, Mr. President, I would like to explain the rationale behind some of the provisions of this amendment that I expect will be questioned by those who support Norfolk Southern's desire to have a clean bill with no amendments.

First and foremost, I want to make it very clear that this is not an attempt to reregulate the industry in any way. I think that this is clear enough on its face, but I want to emphasize this point. Indeed, many of the strongest advocates of deregulation support this amendment.

This does not confer any unusual authority on the ICC. In fact, merger proposals normally are required to be approved by the ICC unless they have a special statutory exemption, as is the case here. When the ICC does approve a merger under the normal procedures, it frequently retains jurisdiction to modify conditions or to impose new conditions on the merged railroad if it utilizes its monopolistic position to the competitive detriment of other affected railroads. This amendment is modeled after that frequent ICC practice and is not giving the ICC any unusual authority. In fact, it is simply restoring a small portion of what normally would have been within its power, if Congress had not granted an exemption.

Second, the amendment requires Norfolk Southern to show that the diversions resulted "because of superior service and efficiency," rather than because of its market power. This burden of proof is placed on Norfolk Southern for two very good reasons.

Most importantly, Norfolk Southern will be the only railroad with the information and data necessary to prove the reasons for the diversions. To place the burden on the petitioning railroad would be to require them to prove a negative. That is almost impossible in any case. Norfolk Southern is clearly in the best position to prove what caused the diversions and the amendment reflects that reality. The second reason is that Norfolk Southern has consistently stated that no diversions will result from the merger. I feel it is only fair that they be required to prove their point.

CONCLUSION

With that, Mr. President, I conclude my remarks on this amendment. I urge my colleagues to support it when it is offered tomorrow or later in the debate on S. 638. It should not present a problem to Norfolk Southern, the Department of Transportation, or the proponents of S. 638 if the information the Department has been supplying us is correct. And it will insure against a potentially catastrophic situation that could be caused in other parts of the country as a result of S. 638 without this important amendment.

Mr. President, I ask unanimous consent that first, a copy of the amendment, second, a section-by-section analysis of the amendment, third, a copy of the January 24 letter I sent to the Secretary of Transportation regarding the amendment, and fourth, a copy of the "Dear Colleague" signed by the eight cosponsors of this amendment be printed in the RECORD at this time.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

The text of the amendment (No. 1438) is printed under Routine Morning Business.

SECTION-BY-SECTION ANALYSIS OF THE AMENDMENT TO ESTABLISH A PROCEEDING BY THE INTERSTATE COMMERCE COMMISSION

Subsection 303(a). This subsection of the amendment permits smaller railroads to petition the ICC to seek relief from diversions of traffic from their lines that are attributable to the acquisition of Conrail by Norfolk Southern. The conditions precedent to seeking relief are (1) that the petition be filed within 10 years of the consummation of the sale of the interest of the United States in the stock of Conrail to Norfolk Southern; (2) that in calendar 1985 the petitioning

railroad have had rail operating revenues less than $1 billion; and (3) that the petitioning railroad allege the diversions result from the acquisition of Conrail by Norfolk Southern and the exercise of market power by the consolidated Norfolk Southern and Conrail system (the Consolidated System.)

Subsection 303(b). This subsection requires the Commission to commence a proceeding in response to a petition filed under subsection 303(a) if it finds that the petitioning railroad, as a result of the exercise of market power by the Consolidated System, has suffered either: (1) a diversion of traffic equal to or greater than 3½ percent of the number of carloads handled by the railroad in calendar 1985, or (2) a rerouting of traffic that has resulted in a loss of revenues from such traffic equal to or greater than 3½ percent of the rail operating revenues of the petitioning railroad in calendar 1985.

In determining whether the diversion or rerouting of traffic was caused by the exercise of market power by the Consolidated System, Norfolk Southern will have the burden of establishing by clear and convincing evidence that the diversion or rerouting was caused by superior service and efficiency on the route to which the traffic was diverted. In the absence of such proof by Norfolk Southern, the Commission is required to presume that the diversions were caused by the exercise of market power by the Consolidated System.

Subsection 303(c). This subsection requires the Commission, in a proceeding commenced under subsection 303(b), to determine the additional divestitures or conditions necessary to eliminate the market power of the Consolidated System, and to provide the petitioning railroad fully competitive connecting access to each major rail market.

In determining whether the Consolidated System has market power in any major rail market, the Commission is directed to accord substantial weight to the methods of analysis of market power set forth in the merger guidelines issued by the Department of Justice.

At the conclusion of such a proceeding, the Commission is required to issue an order directing divestitures and conditions to eliminate the market power of the Consolidated System in those major rail markets where it has such power, and to provide the petitioning railroad with competitive alternative access to the major rail markets served by the Consolidated System.

Subsection 303(d). This subsection requires that the divestitures ordered by the Commission under this Section shall be made at prices to be agreed by the Norfolk Southern and the divestee approved by the Commission. In the event that the parties cannot agree on a price, the Commission is directed to set a price for the divested properties. In setting a price the Commission is directed not to take into account any value of the divested properties that results from the market power of the Consolidated System in any rail market.

Subsection 303(e). This subsection requires that the Commission issue a final order in a proceeding initiated in response to a petition filed under subsection 303(a) within one year of the date of filing of the petition.

Subsection 303(f). This subsection ensures that the decision and order of the Commission issued in a proceeding under this Section be subject to judicial review in the same manner as other Commission orders in merger proceedings—in the United States Court of Appeal under the provisions of the Hobbs Act and in accordance with the standards of the Administrative Procedure Act. The subsection also provides that any divestiture or condition ordered by the Commission under this Section be deemed approved by the Commission under Chapter 113 of the Interstate Commerce Act. This approval ensures that the divestitures and conditions ordered by the Commission may be implemented with immunity from antitrust liability and notwithstanding the contrary provisions of any state or federal law.

U.S. SENATE, COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC, January 24, 1986.

Hon. ELIZABETH DOLE,
Secretary, Department of Transportation, Washington, DC.

DEAR MADAME SECRETARY: Enclosed for your consideration is a copy of an amendment I will be offering to S. 638, the Conrail Sale Amendments Act. The purpose of this letter is to seek your support for its successful passage in the Senate.

As you know, my major concern with S. 638 is the potential adverse impact that a merged Norfolk Southern/Conrail railroad system would have on the railroads in the Midwest and other parts of the country outside the immediate Norfolk Southern/Conrail region. Since the Department of Transportation has estimated that no railroad outside this area will suffer traffic diversions in excess of 2 percent of present traffic, it is my hope that you will be able to support the amendment.

As I have described in recent Senate speeches, this amendment is designed to protect smaller railroads in the Midwest and the West from the potentially anticompetitive impacts of the merger. It would not go into effect unless the ICC finds that, as a result of the anticompetitive impact of the merger, these smaller railroads have experienced traffic diversions in excess of three and one-half percent. If the Department's estimates are accurate, the amendment should never have to be used by these railroads and I hope you can support it.

We have chosen the three and one-half percent diversion figure because it represents the point at which the actual existence of some of these smaller railroads is threatened. I trust you will find this percentage figure to be extremely conservative as it would require diversions in excess of 200 percent of the Department's "most liberal case" estimates before it could be used by railroads outside the NS/CR region.

If for any reason you find the three and one-half percent figure to be out of line with the Department's estimate, I would be happy to substitute it with the actual percentage figures contained in the Department's June 28, 1985, letter to Chairman Danforth of the Senate Commerce, Science, and Transportation Committee. That letter contained the following traffic diversion estimates for Midwestern carriers:

	Percent
Milwaukee Road:	0.7
ICG	1.3
Katy	0
C&NW	1.2
Soo	0
KCS	1.0

Another letter from the Department addressed to me dated August 2, 1985, stated that "[t]he diversion figures for the Midwestern carriers are all below the two percent figure, both in the base case and the liberal case estimates," and that the "[i]mpact on the Western carriers is *de minimus*, both in absolute and percentage terms."

I have relied on these letters, along with the Department's testimony at Commerce Committee hearings, in drafting this important amendment. It is a good faith effort on my part to soften what I fear will be a serious anticompetitive problem for railroads around the country. I still believe that a stand-alone Conrail would address the problem far more efficiently. However, absent the stand-alone alternative, I believe this amendment will go a long way in addressing my concerns.

I would appreciate it if you could advise me as to your position on this amendment as soon as practicable. If you should have any questions or would like to discuss this issue in more detail, please feel free to call me or have your staff contact Kevin Schieffer of my office. Any suggestions would be appreciated. I appreciate your consideration of this matter and look forward to working with you.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

U.S. SENATE,
Washington, DC, January 21, 1986.

Re Conrail Sale Amendments Act (S. 638).

DEAR COLLEAGUE: When the Senate considers the Conrail Sale Amendments Act (S. 638) this week, we will offer an amendment which is designed to protect small and regional railroads from unfair market dominance and other anticompetitive pressures which could be exerted by a combined Norfolk Southern/Conrail (NS/CR). The amendment would apply only to the extent that the ICC finds anticompetitive or unfair market control has been exercised by NS/CR.

Although the amendment is designed to protect smaller railroads in the Midwest and the West, it also applies to small railroads within the immediate NS/CR region. It does not apply to the larger railroads such as CSX, Burlington Northern, Union Pacific, etc.

In effect, the amendment simply gives the affected railroads a cause of action before the Interstate Commerce Commission if within ten years of the consummation of the sale the ICC finds that these small or regional railroads have experienced traffic diversions of three and one-half percent or greater, due to the anticompetitive impact of the sale. If the diversions are caused by fair competiton or some other nonmonopolistic force, no remedy will be available. The remedy under the plan would be to allow the affected railroad, following an ICC investigation and determination, to purchase at fair market value enough track or trackage rights from NS/CR to allow for adequate competition in the affected region.

The philosophy behind this amendment is quite simple: the rail system of the Midwest or the Western part of the country, as well as the smaller Northeastern carriers, should not be sacrificed for the the sole benefit of a single railroad.

We do not believe this transaction should be made at the expense of other railroads. But, if Department of Transportation figures are accurate, this amendment should never have to be used. The DOT estimates that "[t]he diversion figures for the Midwestern carriers are all below the two per-

cent figure, both in the base case and the liberal case estimates," and that the "[i]mpact on the Western carriers is *de minimus*, both in absolute and percentage terms." So this amendment should not pose a problem assuming these estimates are accurate. Indeed, we have made the numbers extremely conservative. The amendment would require diversions in excess of 200 percent of the DOT's "most liberal case" estimates before it could be used by railroads outside the immediate NS/CR region!

We have used the three and one-half percent diversion figure because it represents the point at which the actual existence of some of the smaller railroads is threatened. Additionally, we have made it very clear that the diversions must be caused by anticompetitive factors arising from the NS/CR merger. Diversions for other reasons simply will not be considered by the ICC.

This amendment is the result of a sincere desire on our part to avoid a potentially catastrophic situation with railroads in other parts of the country. Conrail originally became the ward of the federal government because of the large number of railroad failures in the Northeast. It would indeed be ironic if, by finally turning this system over to the private sector and getting the federal government out of the railroad business, we set the wheels in motion for larger railroad failures in other parts of the country, thereby starting the process all over again.

Our amendment will provide for protection against that happening. It would not require any re-regulation of the industry. (Indeed, it may never have to go into effect.) Regardless of how you ultimately decide to vote on the merits of S. 638, we hope you will be able to support this amendment as a reasonable means of protecting railroads outside the NS/CR region from the potentially anticompetitive impacts of this transaction.

We ask for your support for this extremely important amendment, and invite you to join us as a cosponsor.

If you have any questions regarding this amendment or if you would like to cosponsor, please contact us or have our staff contact Kevin Schieffer of Senator Pressler's office at Ext. 45842 or Bill Mattea of Senator Dixon's office at Ext. 48814.

Sincerely,

Alan J. Dixon, Larry Pressler, John Heinz, Paul Simon, Russell Long, James Abdnor, Edward Zorinsky, James Exon.

Mr. METZENBAUM. Mr. President, I do not think we want to confuse the issue. Let me see if I can throw a little light on it.

The Parliamentarian has stated that the point of order the Senator from Ohio has made would have been sustained but for the fact that the Senator from Missouri made his motion to waive the Budget Act provisions. The Parliamentarian has also made it clear that section 303 of the Budget Act says that no revenue can be lost in fiscal year 1987 prior to the adoption of the first concurrent budget resolution for this year and that Gramm-Rudman made a number of modifications to this section, such as expanding it to include a later budget, but that the facts are that section 303 of Budget Act is in place and would provide the basis for sustaining the point of order of the Senator from Ohio.

If I have misstated the facts or the law, then I hope that the Parliamentarian will be good enough, through the Chair, to advise the Senator from Ohio if he has misstated it.

The PRESIDING OFFICER. The Senator is correct in his statement.

Mr. METZENBAUM. I thank the Chair.

What we were talking about is the point that the Senator from Ohio has made. That is that we are going to lose revenue—we are going to lose revenue—if we adopt the pending bill. I shall address myself momentarily to the substitute, but first, I want to point out the situation with respect to the pending bill, because the substitute is not yet in place.

The Congressional Budget Office, on June 6, 1985, wrote as follows to my colleague from Missouri:

If this bill is enacted, we estimate that the Federal Government would be paid about $1.4 billion in 1986 for the sale of Conrail, would save about $10 million a year in labor protection payments, and would lose about $0.4 billion in tax revenues and $0.8 billion in future interest and dividend payments from Conrail over the 1986-90 period.

So, instead, there would be a loss of revenue.

As a matter of fact, my colleague from Missouri is aware of the fact that this body has no authority to deal with revenue producing measures and the Conrail bill is such a measure as would be barred from our acting in connection with it under the Constitution of the United States because the Constitution of the United States provides that revenue measures must originate in the House of Representatives. So, what do we have before us today?

My colleague from Missouri is asking unanimous consent to substitute a totally different bill than that which came out of committee and that bill contains a provision that is unique. It is understandably unique because it has not been proposed at an earlier time because it will not fly. It is not in accord with the Constitution. You cannot make a rose out of a sow's ear and you cannot make a revenue producer into a nonrevenue producer in the manner in which the effort has been made in the substitute bill which my colleague is asking us to take up by unanimous consent or put in place by unanimous consent. They have inserted the following provision in the substitute:

Any provision of this act which, pursuant to article I, section 7, of the Constitution, provides for raising revenue shall only be effective upon the enactment into law of a bill which has originated in the House of Representatives enacting such provision.

If any Member of the U.S. Senate thinks that our distinguished colleagues in the House of Representatives are going to give up in one fell swoop their prerogatives in originating revenue measures, he is kidding himself or she is kidding herself.

The House of Representatives is not going to accept a bill to circumvent the restraints in the Constitution of the United States. As a matter of fact, I think that there is a kind of impudence, and I do not mean the word in a derogatory sense, but there is a kind of impudence or impertinence in our sending that kind of measure over to them and thinking that they are going to accept it. I have had some exploratory talks with some Members of the House—with many of them; I cannot speak to all of them at once since there are 435—to inquire of them as to their reaction to this very unique and unusual provision. Before the afternoon has concluded or at some point tomorrow, I shall address myself further to that subject after having heard from one or more Members of the House.

Suffice it to say that we stand here this afternoon being asked to waive—to waive—Gramm-Rudman-Hollings as it affects section 303 or, vice versa, section 303 as amended by Gramm-Rudman-Hollings. But slice it any way you want, we are being asked to waive Gramm-Rudman-Hollings.

The first act of any meaningful consequence by the U.S. Senate in the year 1986, and what would it do? It would open the door for another waiver and another waiver and another waiver and another waiver, down the line, from Gramm-Rudman-Hollings.

If my colleagues feel as strongly as I do about our obligation to balance the budget—and some may hope to do it through Gramm-Rudman-Hollings, and others of us think it should be done by an up or down vote, but no one can deny our obligation to attempt to balance the budget. If that be the case, we have a responsibility from which we should not shrink. That is, we should not agree to waive the Gramm-Rudman-Hollings provisions as they affect section 303.

Mr. DANFORTH. Mr. President, the Senator from Ohio says slice it any way you want. I do not want to slice it the way the Senator from Ohio sliced it, whatever "it" is.

Mr. President, the fact is that the Senator from Ohio has made a very technical point of order going against the underlying bill, not pertaining in any way to the substitute and not touching in any way Gramm-Rudman-Hollings. The Senator from Ohio says that the issue before the Senate is whether, the first thing out of the box, we are going to waive Gramm-Rudman-Hollings. Mr. President, I have not asked that the Senate waive Gramm-Rudman-Hollings. I support Gramm-Rudman-Hollings. I voted for Gramm-Rudman-Hollings. I believe

that it is a step toward getting control of the Federal deficit. I believe that selling Conrail is a step toward getting control of the Federal deficit in two ways: One, bringing revenue in through the sale and, two, stopping the hemorrhage of subsidies which has flowed out of the Treasury in order to keep Conrail going.

Mr. President, to further clarify my understanding that the point of order raised by the Senator from Ohio does not have anything to do with Gramm-Rudman-Hollings, I would put the following question to the Chair. Mr. President, I would like to reiterate my understanding of the point of order raised by the Senator from Ohio. The Senator raised a point of order under section 303 of the Budget Act that the underlying bill would affect revenue. Am I correct in my understanding that the Gramm-Rudman bill did not make any material change in the revenue provisions of section 303?

The PRESIDING OFFICER. That is correct.

Mr. DANFORTH. And therefore, Mr. President—I will not direct this question to the Chair but just say it as a point of analysis—when the Senator from Ohio attempts to link his point of order with Gramm-Rudman, his point of order has nothing whatever to do with Gramm-Rudman—nothing. It is totally an extraneous argument. It is an effort by the Senator from Ohio to try to shoehorn the question of the Federal budget into an infinitesimally small procedural point directed not against the substitute but against the underlying bill.

Mr. President, I suggest that we could agree not to waive the Budget Act, we could go along with the point made by the Senator from Ohio. Maybe the most straightforward way, however, for Senators to say the same thing is to vote against the bill when we get to it, the bill as modified, the bill as altered by the substitute. That would be the most straightforward way to oppose the sale, but this point of order has nothing to do with Gramm-Rudman-Hollings.

Mr. President, I really appreciate what I would call the hypersensitivity of the Senator from Ohio to Gramm-Rudman-Hollings. I did not quite get that same concern for it last fall when the Senate was addressing the question of Gramm-Rudman, but on the authority that politics makes strange bedfellows I am glad we are in the same bed under Gramm-Rudman.

Mr. METZENBAUM. If the Senator will yield for a moment so he can yield to the Senator from Pennsylvania——

Mr. DANFORTH. I will yield the floor.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. It is indeed the fact that I was very sensitive to Gramm-Rudman-Hollings, so sensitive that I voted against it. And if I had the privilege to do it again, I would vote against it. I am inclined to think there are a number of Senators in this body who, given the opportunity to do so, might very well like to vote against it as I did. I think many have second thoughts about it. But the Senator from Ohio believes that, regardless of how I voted, it is now the law, and if it is the law I think we ought to live up to the law. I believe that we will be violating section 311 of the Budget Act as amended by Gramm-Rudman.

It is true that Gramm-Rudman did not affect the revenue aspects of it but did affect 311 in other respects. So the whole issue is simple. It does not matter whether it is 311, it does not matter whether it is part of the Budget Act, whether it is Gramm-Rudman. The fact is the Senator put in the RECORD a letter from Treasury indicating that this bill will cost $174 million. CBO has even larger figures, substantially larger figures as to the cost. You do not have to be a great mathematician to understand if you are not going to get $300,000 a year between 1987, 1988 and 1989 repaid, that is a loss. You do not have to be a great mathematician to understand someone has the right to depreciate $3.5 billion in capital assets, which Norfolk-Southern would have and take that depreciation away from its other profits. You do not have to be a mathematician to know that this company is making $440 million a year and that the buyer is going to get $800 million in cash and $250 million in pension funds.

All of those things are self-evident. The fact is this bill will cost this revenue. And so my sole point in making the point of order is not to be technical but to be realistic and say to my colleagues in the Senate you wanted to balance the budget, and the first thing you are going to vote for on the floor is a measure that would waive constraints of the Budget Act.

Mr. DANFORTH. Mr. President, if the Senator will yield for a question, I think the Senator misquoted himself but I am not sure. My understanding was that the point of order went to section 303 of the Budget Act. The Senator just stated that he intended to raise the question of section 311 of the Budget Act.

Mr. METZENBAUM. The Senator from Missouri is correct. My point of order was to 303, not to 311.

Mr. DANFORTH. The Senator's reasoning, as I understand it, is that there is, despite the reply of the Chair to my parliamentary inquiry, some language which is relevant to the argument before us between section 303 and Gramm-Rudman?

Mr. METZENBAUM. That is correct.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER (Mr. PRESSLER). The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, when the distinguished manager of the bill, the Senator from Missouri, makes the statement that politics make strange bedfellows, it is obviously a truism of American politics and has been true in this body for many years. But this Senator believes there is a way to rearrange the sleeping accomodations to take care of the underlying thrust that the distinguished manager of the bill, the Senator from Missouri, wants to accomplish, and to accomplish the objections raised by the distinguished Senator from Ohio as well.

When the Senator from Missouri says that the most straightforward way to deal with the objection raised by the distinguished Senator from Ohio may be to vote against the bill, I suggest that there is a better approach. That approach would accommodate the interest of the Senator from Missouri along with the interest of the administration in selling Conrail, in privatizing Conrail, and to do so in a way which would not violate the Budget Act.

My obvious reference here is to have a sale to the investment group gathered by Morgan Stanley, which has offered $1.4 billion—$200 million in excess of the amount offered by Norfolk Southern, and an amount plainly sufficient to meet the requirements of the Budget Act.

The letter from the Treasury Department which specified that the Norfolk Southern proposal would cost the Government, I believe, $124 million, inserted a figure showing that there would be a net gain to the Treasury by the offer of Morgan Stanley. I believe that figure was $24 million.

So I think there is no question about the fact that the Morgan Stanley offer would comply with the requirements of the Budget Act.

I compliment the distinguished Senator from Missouri on his very assiduous work on this Conrail issue. As chairman of the Commerce Committee, he has presided over lengthy hearings. He has worked very hard on this issue. It is a complicated issue, While I do not know the details of his schedule, I am sure he has conferred on many occasions with many administrative officials, and many of his colleagues, and has spearheaded the work of a very expert staff.

The Senator from Missouri and this Senator from Pennsylvania have discussed this matter at length. I know of his very hard work, and I understand his preference for the Norfolk Southern offer. But were Norfolk Sourthern suddenly to withdraw from the pic-

ture, or were Norfolk Southern suddenly to be disqualified, then I believe it is a fair inference to say that the Senator from Missouri would have some interest in an alternative buyer. He might not necessarily lean to Morgan Stanley, or maybe he might. But he would be interested—as I think the Secretary of Transportaton would be, and the President of the United States—in making the best deal possible because of their underlying interest in privatizing Conrail.

So, there is way to accommodate the really basic thrusts which we have on the floor of the U.S. Senate today.

At an appropriate time, this Senator intends to offer an amendment to the pending legislation, S. 638, which would substitute the offer of Morgan Stanley, which this Senator says would satisfy the requirements of the Budget Act, would privatize Conrail, and would avoid an enormous number of complicated questions which this Senator feels will ultimately defeat the bid of Norfolk Southern.

The antitrust issues are enormous. The combination of the Norfolk Southern lines with these of Conrail is a violation of the antitrust laws, as the Department of Justice has stated. The efforts at divestiture are very weak indeed. The efforts at divestiture to Pittsburgh and Lake Erie and Guilford would be like sending the distinguished Senator from Ohio. [Mr. METZENBAUM] to stop "The Refrigerator" on a 1-yard plunge in the Super Bowl. It simply could not be done.

Even it this body gives approval ultimately to Norfolk Southern, this Senator predicts that a fair application by the Department of Justice will ultimately rule out that acquisition as being violative of the antitrust laws.

This body could save itself a great deal of time by avoiding further efforts to sell Conrail to Norfolk Southern, It is my view that Congress would save itself a great deal of time in the House of Representatives as well by taking up the Morgan Stanley offer. That proposal would accommodate the many conflicting contentions which have been advanced today. It would be in the national interest. It would satisfy the budget resolution issue. It would give more money to the U.S. Treasury—a minimum of $200 million by which the Morgan Stanley offer exceeds the Norfolk offer, an additional $24 million at least on the tax issue, and maybe as much as $400 million as projected by the Congressional Budget Office.

So there is a way to solve the problems for all involved, and I urge this body to give serious consideration to the proposal by Morgan Stanley for these reasons.

I yield the floor.

Mr. DANFORTH. Mr. President, I ask unanimous consent that when the Senate resumes consideration of S. 638 at 2 o'clock tomorrow afternoon, the motion to waive section 303 of the Budget Act, which I have made, be the pending business, and that there be 1 hour for debate, equally divided between the Senator from Ohio and myself, and that the vote on that motion occur at 3 o'clock.

Mr. SPECTER. Objection.

The PRESIDING OFFICER. Objection is heard.

Mr. METZENBAUM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GORTON). Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, earlier this afternoon, I announced that within an hour or so I was going to propound a unanimous-consent request that the Danforth amendment to S. 638 be agreed to and be treated as original text for the purpose of further amendment. I stated at the time that it was my intention to make that unanimous-consent request later in the afternoon.

We have made an effort to run the hotlines on the unanimous-consent request. However, because a number of Senators on both sides are not in the area this afternoon, it it not possible to clear that unanimous-consent request. Therefore, I announce to the Senate that it is my intention to make such a request at some point tomorrow.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, I modify my previous motion to strike from it the words "and any amendments thereto."

The PRESIDING OFFICER. The motion is so modified.

Mr. DANFORTH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DANFORTH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, I ask unanimous consent that, when the Senate turns to S. 638 at 2 o'clock tomorrow afternoon, the Danforth motion to waive the Budget Act be the pending business.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

SALE OF CONRAIL TO NORFOLK SOUTHERN VIOLATES ANTITRUST LAWS

Mr. DIXON. Mr. President, there is no doubt that the proposed sale of Conrail to the Norfolk Southern, as recommended in the committee substitute, raises the most serious kind of antitrust issues. What is more, the fact that Conrail is Government-owned creates real conflict-of-interest problems; Government must be particularly careful to ensure that its role as seller does not compromise a fair and impartial review of antitrust issues.

S. 638, however, does not take that kind of care. It does not provide any real due process for shippers, railroads, ports, and others who are adversely affected by the anticompetitive aspects of the proposed sale. Instead, the bill "deems" the sale approved by the Interstate Commerce Commission, effectively ensuring no impartial review of the transaction by either the ICC or the courts. There is, therefore, no way to be sure that proposals the Norfolk Southern and the Department of Justice have made to resolve competitive concerns are sufficient to do so. I do not believe they are, and I do not see how, given the total absence of information on the antitrust issues, anyone can definitively argue otherwise.

The fact that selling Conrail to Norfolk Southern presents major antitrust problems is beyond dispute, Mr. President, even the Department of Justice conceded that without appropriate remedies the proposed merger would violate both the Interstate Commerce Act and the Clayton Antitrust Act. In a January 29, 1985, letter to Secretary of Transportation Dole, the then-Assistant Attorney General for Antitrust, J. Paul McGrath, stated:

> The merger would have a significant adverse effect on competition for the transport of commodities to and from a number of locations in several States, with the greatest corridor running between Buffalo and Pittsburgh in the east and St. Louis and Chicago in the west * * * the Department of Justice therefore would oppose the proposed merger unless its competitive problems are remedied * * *.

The dimensions of the antitrust problem become even more apparent if some of the factors the Department ignored are reviewed. Many observers, including two former Assistant Attorneys General for Anti-trust, have questioned the thoroughness of the Department's analysis. They believe the Department neglected to consider a number of issues that would have demonstrated that the antitrust problem was, and is, in fact, substantially larger than Justice admitted.

Justice failed to follow many of its normal procedures. It did not, for instance make use of the Herfindahl-Hirschman index, a means of identifying concentrated markets, in this case, despite the fact that this methodology was endorsed by Justice in both its 1982 and 1984 merger guidelines. Instead, the Department used a 50-10 test, examining only those markets where both Norfolk Southern and Conrail each had at least 10 percent of the market in rail transportation, and the two railroads together had at least 50 percent of the market. This inferior approach ensured that many competitive problem areas were not examined by Justice.

Further, Justice did not really consider market pairs. It analyzed traffic only to or from a point. This may sound sensible, but it can permit substantial anticompetitive impacts to remain unidentified. For example, Justice did not identify Chicago as either a problem origin or destination. However, Chicago shippers would face highly concentrated markets to a number of areas if Conrail and Norfolk Southern are combined. For example, NS carries 9.6 percent and Conrail 56.7 percent of the Chicago-Pittsburgh traffic, NS carries 6.9 percent and Conrail 75.4 percent of the Chicago-Cleveland traffic; and NS carries 11.2 percent and Conrail 80.3 percent of the Chicago to Buffalo Traffic.

Other analysts, using the techniques Justice ordinarily uses, found significantly larger antitrust problems than were identified by the Department. For example 16 State attorneys general, led by my good friend Neil Hartigan, the attorney general of Illinois, testified before the Senate Judiciary Committee that one study identified 53 business economic area pairs that under the formula traditionally used by the Justice Department would be considered highly concentrated markets where the merger would be likely to substantially lessen competition. This is much larger than the 30 counties that Justice found would be adversely affected.

Another aspect of the competitive problems the proposed sale of Conrail to Norfolk Southern presents can be seen by looking at the traffic that would be diverted from other railroads to a combined Conrail-Norfolk Southern system. In a report prepared for the House Commerce Committee, the staff of the Interstate Commerce Commission found that there could be over $330 million in traffic diverted from a number of railroads to a combined Norfolk Southern-Conrail system. To cite just a few examples, the Chicago & Northwestern could lose over $45 million in traffic; the Illinois Central Gulf could lose over $32 million; and the Grand Trunk Western could lose almost $29 million.

The United States Railway Association also found that a Conrail-Norfolk Southern combination would cause substantial diversions. Diversion estimates by individual railroads that would be affected were even higher. One set of estimates by a number of affected railroads showed that more than $677 million worth of traffic would be diverted to a Conrail-Norfolk Southern system, and that railroad employment of the adversely affected roads would decline by more than 8,100 jobs.

It's important to remember, Mr. President, that these diversions would not occur because a combination of Conrail and Norfolk Southern would be more efficient. Rather they would occur principally because of the monopoly power of the new railroad, which would be the largest carrier in the Nation. In fact, the head of the Federal Railway Association indirectly admitted as much when he told a meeting of eastern railroad officials last year that he did not believe there would be any transcontinental railroad mergers in the near future because there were not major efficiencies to be gained, the new larger systems would be difficult to manage, and most achievable efficiencies could be implemented through agreements between carriers. John Riley's argument is a good one, and it applies with almost equal force to the Conrail-Norfolk Southern situation.

I think it is worth detailing the kind of anticompetitive consequences that would be felt in my own State of Illinois as an example of the problems that an NS-Conrail merger could create. The merged system would dominate rail traffic to and from 18 counties in Illinois; in 10 of these counties, NS/Conrail would control more than 90 percent of the inbound and outbound tonnage, The merged system would give it 100 percent of the rail traffic between major Illinois cities and locations throughout the Nation. The merged system would use its routing power to divert traffic from competing rail carriers for movements between Illinois and other States, and reduce the benefits of rail rate and service competition for Illinois shippers and receivers. The merged system could also divert traffic from major Illinois Rail gateways such as Chicago and East St. Louis to the Kansas City gateway. Further, according to Illinois's attorney general, Neil Hartigan, Illinois could lose over 400 miles of railroad and over 1,000 rail jobs due to the merger.

What this all demonstrates is that the anticompetitive problems caused by a sale of Conrail to Norfolk Southern are very substantial, much more serious than the Justice Department first estimated—and Justice opposes the merger without appropriate divestitures. It also means that the antitrust problems are very widespread. Anticompetitive problems are not limited to the Conrail and Norfolk Southern territories. They extend well into the Midwest and West because of the impact this proposed merger would have on connecting railroads. The kind of problems I have described in Illinois will also be found in numerous other Eastern, Southern, Midwestern, and Western States to one degree or another. No State is immune from the consequences that would ripple out from a merger of this magnitude.

The ordinary rail merger approval process, Mr. President, provides a mechanism for handling antitrust issues such as those presented by the proposed Conrail-Norfolk Southern merger. Under current law, the Commission has 31 months to consider merger transactions. Commission approval then immunizes the merger from the antitrust laws. The ICC effectively functions as the antitrust forum, and has the authority to disapprove mergers as anticompetitive or to condition their approval on the implementation of appropriate remedies, such as divestitures, trackage rights agreements, and gateway agreements.

Importantly, ICC review provides all affected parties, including shippers, other railroads, and ports, for example, with full due process. These rights usually include full on-the-record proceedings, with the right to present evidence, and to cross-examine witnesses—in short, complete procedural due process.

The ICC also demands fairly complete disclosure by the railroads that are merging. The Commission requires the merging parties to provide:

First. An executive summary of the proposed transaction, listing in about 25 to 80 pages:

The proposed actions to implement the merger; construction necessary to tie the tracks together at key points; changes in traffic patterns; proposed abandonments; and environmental impacts as operations change and jobs move to other locations;

Second. An operating plan, identifying in detail changes in service, including:

Existing routes and terminals, traffic mix, route densities, and local service; major changes after the merger, such as changes at each common point, new through train schedules, discontinued trains, new crew districts, new route densities, and shifts in activities for major yards; rehabilitation projects proposed to maximize the benefits from consolidated services and projects avoided because of the merger; equipment utilization projects; and plans to coordinate and consolidate overhead functions such as purchasing, computers, sales offices, public affairs, legal, and planning.

Third. A traffic study identifying sources of additional revenue following the merger, including diversions that would occur as a result of the merger, together with the sources of this additional traffic. The merging partners must analyze place to place diversions, railroads that lose traffic, railroads that gain traffic, and truck traffic diversions.

Fourth. Pro forma balance sheets and income statements for a 3-year period following the proposed merger, and a sources and application of funds statement; and

Fifth. A labor impact analysis, identifying job losses by geographic location, and job category, and identifying jobs relocated and jobs added.

This extensive documentation provides the basis for analysis of the merger, and there is ample opportunity for all parties to test it, to challenge it, and to otherwise act to verify its accuracy. This kind of record has been available in every past railroad merger between profitable railroads, but it is not available in this case. Norfolk Southern has provided almost none of the documentation normally available in merger cases. The shippers, railroads, ports, employees, and others who would be adversely affected by the merger have had virtually no opportunity to see relevant data, to testify themselves, or to cross-examine Norfolk Southern officials.

There has been no due process in this case. S. 638 and the Northeast Rail Services Act together work to totally immunize the sale of Conrail from review by the Interstate Commerce Commission or from judicial review using antitrust law standards applicable to most other mergers. S. 638 provides no substitute process to protect the rights of those adversely affected. Instead, it seems designed to ensure that there is no independent review, and little or no available evidence on which to base such a review.

Now some would argue that the Justice Department has undertaken the kind of review that needs to be provided. However, the Justice Department has had multiple roles in this transaction. Justice was the advisor to Secretary Dole before she selected a bid. Justice is the Government's lawyer, and the Government owns Conrail. And Justice has never undertaken the kind of review that could be called full and independent. Donald I. Baker, a former assistant attorney general for antitrust commented in an April article in the National Law Journal on some of the things Justice has failed to do in reviewing the Conrail sale:

It has not looked at whether there are any less anticompetitive alternative purchase offers available.

It has not publicly analyzed the viability of the Conrail 'public offering' proposal—which would keep Conrail as an independent competitor.

It has not used the Heffindahl-Hirshman index, its standard for measuring anticompetitive effects under the merger guidelines.

It has not weighed the 'efficiency' claims in anything but very general terms.

It has not yet publicly analyzed the probable viability of the proposed spinoffs to Guilford and Pittsburgh and Lake Erie, or the associated conditions.

It has not issued civil investigative demands for documents or taken depositions of anybody.

Instead, the Department has negotiated in secret with the Norfolk Southern, in an attempt to facilitate the sale of Conrail to Norfolk Southern on behalf of the Department of Transportation. Justice, which has admitted that it does not have the in-house expertise to fully analyze rail mergers, has not yet even hired a consultant to review the latest Norfolk Southern divestiture proposal. Whatever one might say about the Department's role in this case, it is crystal clear that the justice's work to date does not constitute a full and independent analysis of the antitrust issues.

Mr. President, as I stated earlier, the kind of inadequate review of antitrust issues that Justice has provided, followed by complete immunity from administrative or judicial antitrust review as provided by S. 638 is not the ordinary way rail mergers are handled. In fact, the Interstate Commerce Commission is now considering a merger just as large as the proposed Conrail-Norfolk Southern merger—the Santa Fe-Southern Pacific merger. The Santa Fe case was filed on March 23, 1984. Santa Fe submitted extensive information on the merger and its consequences. The ICC has held hearings and all parties have had the opportunity to present testimony, and to cross-examine Santa Fe and Southern Pacific witnesses on issues raised by the proposed merger. I understand that the Commission will make its decision in the first half of this year, that is, within a year or 15 months of the time it was filed.

It is worth taking a little time to contrast the role of the Department of Justice in this case as opposed to the Conrail case. Justice is opposing the Santa Fe merger, although the anticompetitive problems it presents are less than half as large—and perhaps several times smaller—than the problems presented by the Norfolk Southern proposal. Justice estimated that roughly 6.2 million tons of freight, or about $240 million, would present antitrust problems in the Santa Fe case. Justice's own analysis showed that a Conrail-Norfolk Southern merger presented problems for over 19 million tons of freight, or about $527 million in revenues, and over $500 million worth of other problems were excluded from its analysis.

In the Santa Fe case, Justice said that even extensive divestitures and trackage rights would not be adequate to solve the antitrust problems. Further Justice rejected the "deep pockets" argument in that case, arguing that the Southern Pacific could make it on its own, even though several measures of SP's economic health are significantly worse than Conrails. Finally, a Justice Department consultant, Dr. Pittman, in testifying on the Santa Fe case, admitted the inadequacies of the analysis in the Conrail case. When questioned about the disparity between the Department's analysis in the Santa Fe case and the Conrail-Norfolk Southern case, he conceded "I think I included some products by using both kinds of analysis, which it's conceivable that the Conrail analysis omitted unwisely."

Even though its Conrail Analysis was woefully inadequate when compared with its work in the Santa Fe case, Justice nonetheless understood that there were severe antitrust problems with a Conrail-Norfolk Southern merger, Mr. President. Its clear that those problems were extensive enough to warrant total Justice Department opposition to the Merger—as in the Santa Fe case. However, because Justice was under severe pressure from the Department of transportation to help DOT implement its sale recommendations, Justice attempted to negotiate a package of divestitures to resolve at least part of the competitive issues.

Justice's efforts have produced not one, but at least three different divestiture proposals by the Norfolk Southern. All three proposals have been built around packages of line sales and trackage rights to two very marginal railroads, Guilford—a regional New England Railroad—and the Pittsburgh and Lake Erie.

Justice established three basic conditions for a divestiture proposal that would ensure competitive service. First, the acquiring railroads must demonstrate that they possess the managerial, operational, and financial capability to compete effectively, and to remain viable over the long-term so that there was some assurance of their ability to provide long-term rail service along the affected corridors. Second, the divestiture should provide the acquirer direct connections in Buffalo, Chicago, Toledo, and East St. Louis to one or more railroads other than Conrail-Norfolk Southern or CSX. Third, after the divestiture, shippers in affected counties located on Conrail-Norfolk Southern must have access through reciprocal switching or other arrangements to the divestiture carrier.

The first divestiture proposal effectively met none of these goals. The lines proposed to be transferred to Guilford, for example, while providing access to East St. Louis on the map, were in such poor shape that there

would be no way for Guilford to offer any real service over the route. Further, the proposal did nothing for shippers in a number of counties where justice admitted there are competitive problems.

Most fundamentally, however, neither Guilford or the Pittsburgh and Lake Erie are railroads healthy enough, or which could become healthy enough in the near future, to provide effective long-term competition to a merged Conrail-Norfolk Southern system. In an August 30, 1985 report to the House Commerce Committee, the staff of the Interstate Commerce Commission concluded that neither Guilford nor the P&LE could survive as long term, viable carriers competing against the proposed new merged railroad. Regarding Guilford, the report said:

Because [Guilford's] assumptions generally are without merit, Guilford's proposal will not result in a viable post-divestiture operation.

As to the Pittsburgh and Lake Erie, the report concluded that the—

P&LE is not now a financially viable carrier and its acquisition of the new lines will not enable it to reverse its already precarious financial position.

The Justice Department hired a consultant, R.L. Banks and Associates to review the proposed divestiture plan after admitting that it "does not have the in-house expertise to evaluate technical and operational aspects of any proposed divestiture." The preliminary Banks report came to much the same conclusion as the ICC staff report. Regarding Guilford, the Banks report said:

[Guilford's] "viability would be dependent heavily upon the realization of several optimistic assumptions, and . . . even under the most favorable circumstances, GTI's [Guilford's] continued existence would be parlous".

The report went on to state:

Doubts about the realism of the marketing and operating plans apply equally to the financial statements; the very real possibility that GTI [Guilford] would fail to realize projected gains in revenues and efficiency, leads to the conclusion that survival of an expanded GTI [Guilford] system is yet to be proven.

The Banks reports conclusions regarding the P&LE were even more devastating. The report found that:

Review of available financial date for the P&LE * * * raises serious concern as to whether a business plan and financing agreement can be developed that would allow an affirmative finding with respect to the likely long-term viability of the P&LE.

These independent reports demonstrated the inadequacy of the first divestiture proposal, and made it impossible for DOT to move forward with the merger. Norfolk Southern therefore developed a second divestiture proposal. DOT and Justice had learned their lesson, however. There would be no opportunity for independent review of divestiture proposals. Nonetheless, the second divestiture proposal was also quickly seen to be hopelessly inadequate.

Last November, therefore, a summary of a third divestiture plan was released. The plan includes extensive trackage rights over Conrail lines for Guilford—over 1,000 miles—together with certain line sales. P&LE would also purchase lines and receive trackage rights under the third proposal. On November 19, the Justice Department announced that the third plan:

Appears on its face to address the competitive concerns that must be addressed before the Department can approve Norfolk Southern's acquisition. * * *

I do not understand, Mr. President, how the Justice Department was able to reach that conclusion. At the time Justice made its announcement it did not have:

The written agreements between Norfolk Southern and Guilford and P&LE setting out the terms and conditions of the latest divestiture plan, including such fundamental matters as the total price to be paid by the P&LE for the lines to be acquired by it.

Marketing and operating plans for Guilford and P&LE, including projected train schedules and supporting date for revenue and cost projections.

Financial projections for Guilford and P&LE, including sources of funding for the payments to be made to Norfolk Southern in respect to line acquisitions, equipment purchases, leasehold arrangements, and track and yard rehabilitation; pro forma financials showing anticipated revenues and expenditures in the first full year of operations following divestiture; and balance sheets for the pro forma year; and

Density projections showing the likely volume of traffic to be handled over the raillines and trackage rights to be acquired by Guilford and P&LE, together with projections of commodity mix sufficient to form a reasonable basis for projections of anticipated revenue.

As I understand it, Justice still does not have this information. What is more, no one else has seen it either, or been able to analyze whatever information Justice might have. Justice refused to hear from any of the parties that would be adversely affected by the merger regarding the divestiture proposal.

On the basis of what little information is available, however, there is little doubt about the adequacy of the third divestiture proposal. There is virtually no reason to believe that the latest proposal will result in effective rail competition.

First, there is still no evidence to indicate that Guilford and the P&LE will ever be anything more then extremely marginal carriers. Guilford lost $29 million in the 1982–84 period, and the P&LE lost even more, over $45 million in the 1982–84 timeframe.

There is, on the other hand, strong reason to believe that Guilford's and P&LE's very existence in the future would be dependent on the sufferance of the Conrail-Norfolk Southern System. Guilford and P&LE together had revenues of only about $350 million in 1984, as opposed to revenues of almost $7 billion that year for a combined Conrail-NS. In fact, considering that the Department of Transportation argues that Conrail, with its excellent facilities and 5-year history of increasing profits, is not viable over the long term, it is hard to imagine how the administration could ever contend with a straight face that Guilford or the P&LE would ever be viable enough to provide effective competition.

Second, the plan fails to provide for any new rail service in 15 of the 30 counties where the Justice Department admitted new service was essential. Where rail service is offered, it is often competitively inferior. In fact, it is hard to imagine how the marginal Guilford and P&LE railroads, both of which need major rehabilitation, can compete with the high-capacity and well-maintained Conrail and Norfolk Southern Systems.

Third, the plan is insensitive to the needs of employees, shippers, and communities. It would force many Conrail employees, who have already been through painful restructuring, through another unnecessary restucturing process.

Fourth, the plan fails to address in any realistic fashion the diversion problems facing railroads that connect with Conrail. It does nothing, for example, to ensure that a Conrail-Norfolk Southern System would not use its monopoly power to divert traffic from the Chicago and East St. Louis gateways to the Kansas City gateway. It is worth remembering that the Federal Government has invested substantial sums into upgrading the Chicago and Northwestern's line from the West into Chicago. Diversion of traffic off the Northwestern to Conrail-Norfolk Southern at Kansas City would work to undercut that investment.

Finally, because the plan calls for granting the divestiture carriers substantial trackage rights over Conrail, there is a real question as to where the plan is in accordance with at least the spirit of the Northeast Rail Services Act. That act expressed Congress' clear preference for selling Conrail as a unit, and not breaking it up. Yet the plan transfers substantial trackage rights over Conrail lines to the divestiture carriers.

The Department of Justice indicated in its statement on the third divestiture plan that it intended to have a consultant review the proposal and

report back. It is now 2 months since the Department made its statement, yet the Department has not even picked a consultant. I do not believe a consultant's analysis could possibly cure the procedural and substantive errors involved with the third divestiture plan. However, I do believe that the absence of the consultant's report is a strong indication that the Department of Justice is afraid of what an independent analyst would find.

Let me conclude, Mr. President, by summarizing the reasons I believe S. 638 is so flawed on antitrust grounds. Selling Conrail to Norfolk Southern would create the largest railroad in our Nation. It is a merger that everyone admits raises serious antitrust problems, even the Department of Justice. The Antitrust Division's analysis, however, was inadequate, and greatly underestimated the anticompetitive effects of the proposed merger.

What is even worse, the Antitrust Division and the Department of Transportation have followed a procedure that seems designed not to uncover antitrust problems, and to ensure that they are not resolved in any effective way. The process has been closed. Shippers, railroads, ports, and others who would be adversely affected have had no opportunity to present their case.

This is not the ordinary way mergers are handled. Every other merger between profitable railroads has been considered by the Interstate Commerce Commission where all parties have had full procedural rights. The ICC process also works to ensure that all parties have access to the kind of information necessary to consider antitrust issues—information that has been so sadly lacking in this case.

Further, Justice has not played an independent role in this case; it has instead acted as DOT's lawyer in attempting to do everything possible to expedite a sale. It has analyzed the Norfolk Southern-Conrail merger using different standards than it has in other cases, including the Santa Fe-Southern Pacific case. The Department opposes the Santa Fe merger, even though the anticompetitive impacts are much smaller than in the Norfolk Southern case. In that case, the Department found divestitures to be inadequate, while now it supports divestitures.

The divestiture proposal that Norfolk Southern is now proposing is hopelessly flawed. It is based on two railroads—Guilford and the P&LE—who simply do not have the financial wherewithal to provide effective competition. And the proposal does nothing to resolve a number of the antitrust issues, such as the Midwest diversion problem.

It seems to me that the Government is in a real conflict of interest in this situation. Because the Government owns Conrail, it should be particularly careful to see that its role as owner does not preclude full and fair analysis of the antitrust remedies, followed by implementation of remedies appropriate to ensure that competitive issues are resolved. But that is not what S. 638 has done. Instead that bill "deems" the merger approved by the ICC, and precludes review of the antitrust issues by the courts.

Mr. President, I do not believe the Senate wants to ignore the antitrust concerns presented by this huge merger. I'm sure my colleagues want to know that adequate information is available on antitrust issues, that they get independent review, and that all parties have a chance to make their case.

Antitrust considerations deserve the kind of attention that S. 638 so studiously avoids. Congress should act to return Conrail to the private sector, but not in a manner that so totally ignores the competitive concerns raised by the Norfolk Southern offer. It is possible to return Conrail to the private sector in a manner that is in accordance with our antitrust laws. I urge my colleagues to join me in working to ensure that the Senate adopts that course of action.

Mr. DANFORTH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the appropriate committee.

(The nomination received today is printed at the end of the Senate proceedings.)

ANNUAL REPORT ON HAZARDOUS MATERIALS TRANSPORTATION—MESSAGE FROM THE PRESIDENT—PM 102

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Commerce, Science, and Transportation:

To the Congress of the United States:

In accordance with the requirements of Section 109(e) of the Hazardous Materials Transportation Act (P.L. 93-633), I hereby transmit the Fifteenth Annual Report on Hazardous Materials Transportation for calendar year 1984.

RONALD REAGAN.

THE WHITE HOUSE, *January 27, 1986.*

PRESIDENTIAL APPROVALS

A message from the President of the United States announced that he had approved and signed the following enrolled bills and joint resolutions:

On December 18, 1985:

S. 727. An act to clarify the application of the Public Utility Holding Company Act of 1935 to encourage cogeneration activities by gas utility holding company systems.

S. 1116. An act to amend the act of October 15, 1982, entitled "An Act to designate the Mary McLeod Bethune Council House in Washington, District of Columbia, as a national historic site, and for other purposes".

On December 20, 1985:

S. 1264. An act to amend the National Foundation on the Arts and the Humanities Act of 1965, and for other purposes.

On December 23, 1985:

S. 947. An act to amend the Foreign Assistance Act of 1961 with respect to the activities of the Overseas Private Investment Corporation.

S. 1884. An act to amend the Farm Credit Act of 1971, to restructure and reform the Farm Credit System, and for other purposes.

S.J. Res. 32. Joint resolution to authorize and request the President to designate September 21, 1986, as "Ethnic American Day".

S.J. Res. 70. Joint resolution to proclaim March 20, 1986, as "National Agriculture Day".

S.J. Res. 213. Joint Resolution to designate January 19 through January 25, 1986, "National Jaycee Week".

On December 26, 1985:

S. 1728. An act to authorize the Cherokee Nation of Oklahoma to lease certain lands held in trust for up to ninety-nine years.

S.J. Res. 189. Joint resolution designating the week beginning January 12, 1986, as "National Fetal Alcohol Syndrome Awareness Week".

On December 28, 1985:

S. 1621. An act to amend title 25, United States Code, relating to Indian education programs, and for other purposes.

S. 1706. An act to authorize the Architect of the Capitol and the Secretary of Transportation, in consultation with the Chief Justice of the United States, to study alternatives for construction of a building adjacent to Union Station in the District of Columbia, and for other purposes.

S. 1918. An act to change the date for transmittal of a report.

S.J. Res. 198. Joint resolution to designate the year of 1986 as the "Sesquicentennial Year of the National Library of Medicine".

S.J. Res. 235. Joint resolution to designate the week of January 26, 1986, to February 1, 1986, as "Truck and Bus Safety Week".

S.J. Res. 255. Joint resolution relative to the convening of the second session of the Ninety-ninth Congress.

On January 2, 1986:

S. 1840. An act to amend title 5, United States Code, to revise the authority relating to the payment of subsistence and travel allowances to Government employees for official travels; to prescribe standards for the allowability of the cost of subsistence and travel of contractor personnel under Government contracts; and for other purposes.

MESSAGES FROM THE PRESIDENT RECEIVED DURING THE ADJOURNMENT

Under the authority of the order of the Senate of January 3, 1986, the Secretary of the Senate, on January 23, 1986, during the adjournment of the Senate, received messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(The nominations received on January 23, 1986, are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE RECEIVED DURING THE ADJOURNMENT

ENROLLED BILL SIGNED

Under the authority of the order of the Senate of January 3, 1986, the Secretary of the Senate, on January 23, 1986, received a message from the House of Representatives, announcing that the Speaker had signed the following enrolled bill:

S. 2013. An act to delay the referendum with respect to the 1986 through 1988 crops of Flue-cured tobacco and to delay the proclamation of national marketing quotas for the 1986 through 1988 crops of Burley tobacco.

Under the authority of the order of the Senate of January 3, 1986, the enrolled bill was signed on January 23, 1986, during the adjournment of the Senate by the President pro tempore [Mr. THURMOND].

MESSAGE FROM THE HOUSE

At 12:01 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2443. An act to limit the number of days a depository institution may restrict the availability of funds which are deposited in any account; to the Committee on Banking, Housing, and Urban Affairs.

ENROLLED BILL PRESENTED

The Secretary of the Senate announced that on January 23, 1986, she had presented to the President of the United States the following bill:

S. 2013. A bill to delay the referendum with respect to the 1986 through 1988 crops of Flue-cured tobacco and to delay the proclamation of national marketing quotas for the 1986 through 1988 crops of burley tobacco.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-2287. A communication from the Chairman of the Equal Employment Opportunity Commission, transmitting, pursuant to law, a report on the system of internal accounting and administrative control in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2288. A communication from the Chairman of the Board of Governors of the United States Postal Service, transmitting, pursuant to law, the annual report of the Board under the Government in the Sunshine Act for calendar year 1985; to the Committee on Governmental Affairs.

EC-2289. A communication from the Chairman of the Securities and Exchange Commission, transmitting, pursuant to law, schedules to supplement the previously submitted report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2290. A communication from the Special Counsel Merit Systems Protection Board, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1986; to the Committee on Governmental Affairs.

EC-2291. A communication from the Acting Chairman of the Federal Trade Commission, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2292. A communication from the Acting Chairman of the Federal Trade Commission, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1986; to the Committee on Governmental Affairs.

EC-2293. A communication from the District of Columbia Auditor, transmitting, pursuant to law, a report entitled "D.C. Auditor's Review of the University of the District of Columbia's Postsecondary Education Fund"; to the Committee on Governmental Affairs.

EC-2294. A communication from the Director of the Federal Judicial Center, transmitting, pursuant to law, the annual report of the Center for fiscal year 1985; to the Committee on the Judiciary.

EC-2295. A communication from the Executive Secretary, Office of the Secretary of Defense, transmitting, pursuant to law, the annual report on Department of Defense procurement from small and other business firms for fiscal year 1985; to the Committee on Small Business.

EC-2296. A communication from the Director of the Defense Security Assistance Agency, transmitting, pursuant to law, a report on the Department of the Air Force's proposed letter of offer to Turkey for defense articles estimated to cost in excess of $50 million; to the Committee on Armed Services.

EC-2297. A communication from the Director of the Defense Security Assistance Agency, transmitting, pursuant to law, a report on the Department of the Air Force's proposed letter of offer to Korea for defense articles estimated to cost in excess of $50 million; to the Committee on Armed Services.

EC-2298. A communication from the Administrator of the Panama Canal Commission, transmitting, pursuant to law, the annual report of the Commission, including unaudited financial reports, for fiscal year 1985; to the Committee on Armed Services.

EC-2299. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the annual report of the Department's Solar Energy and Energy Conservation Bank for fiscal year 1985; to the Committee on Banking, Housing, and Urban Development.

EC-2300. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report on essential air service to Southeast Alaska; to the Committee on Commerce, Science, and Transportation.

EC-2301. A communication from the Federal Co-Chairman of the Appalachian Regional Commission, transmitting, pursuant to law, a report on the system of internal accounting and administrative controls in effect during calendar year 1985; to the Committee on Governmental Affairs.

EC-2302. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a list of the reports issued by the General Accounting Office during December 1985; to the Committee on Governmental Affairs.

EC-2303. A communication from the Chairman of the Council of the District of Columbia, transmitting, pursuant to law, copies of D.C. Act 6-124 adopted by the Council on December 17, 1985; to the Committee on Governmental Affairs.

EC-2304. A communication from the Chief Justice of the United States, transmitting, pursuant to law, a copy of the Report of the Proceedings of the Judicial Conference of the United States, held in Washington, D.C. on September 17 and 18, 1985; to the Committee on the Judiciary.

EC-2305. A communication from the Clerk of the United States Claims Court, transmitting, pursuant to law, the annual report of the United States Claim Court for fiscal year 1985; to the Committee on the Judiciary.

EC-2306. A communication from the Secretary of Education, transmitting, pursuant to law, the annual report of the Special Education Software Center for fiscal year 1984; to the Committee on Labor and Human Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. McCLURE, from the Committee on Energy and Natural Resources, without amendment:

S. 595. A bill to provide relief for certain land entrymen in Idaho (Rept. No. 99-231).

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first

and second time by unanimous consent, and referred as indicated:

By Mr. TRIBLE (for himself, Mr. COHEN and Mr. WARNER):

S. 2020. A bill to amend title 5, United States Code, to expand the class of individuals eligible for refunds or other returns of contributions from contingency reserves in the Employees Health Benefits Fund; to make miscellaneous amendments relating to the Civil Service Retirement System and the Federal Employees Health Benefits Program; and for other purposes; to the Committee on Governmental Affairs.

By Mr. TRIBLE (for himself and Mr. ARMSTRONG):

S. 2021. A bill to authorize humanitarian assistance for the National Union for the Total Independence of Angola [UNITA]; to the Committee on Foreign Relations.

By Mr. METZENBAUM:

S. 2022. A bill to amend the Clayton Act regarding antitrust enforcement; to the Committee on the Judiciary.

By Mr. LEVIN (for himself, Mr. DURENBERGER and Mr. RUDMAN):

S. 2023. A bill to provide for the establishment of a file concerning the review of rules by the President, and for other purposes; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. TRIBLE (for himself, Mr. COHEN, and Mr. WARNER):

S. 2020. A bill to amend title 5, United States Code, to expand the class of individuals eligible for refunds or other returns of contributions from contingency reserves in the employees health benefits fund; to make miscellaneous amendments relating to the civil service retirement system and the Federal Employees Health Benefits Program; and for other purposes; to the Committee on Governmental Affairs.

FEDERAL EMPLOYEES BENEFITS IMPROVEMENT ACT

Mr. TRIBLE. Mr. President, last May, Blue Cross/Blue Shield first announced plans to offer premium rebates to policy holders under the Federal Employees Health Benefits Program. These rebates were made possible by a decreasing rise in health care costs and increasingly responsible use of health care resources by policy holders. Subscribers, Congress and the administration welcomed this news and the rebates were eagerly awaited.

As my colleagues will recall, soon after this announcement by Blue Cross/Blue Shield, it was discovered that current law permits such refunds for employees of the Federal Government only. Federal retirees are ineligible.

In response, I introduced legislation last July which corrected this deficiency in the law and permitted Federal retirees to receive rebates along with their currently employed Federal counterparts. Representative FRANK WOLF introduced similar legislation in the House of Representatives.

Since that time, this legislation—originally aimed at providing premium rebates for Federal retirees—has evolved into legislation making a number of changes in the Federal Employees Health Benefits Program and other programs including the civil service retirement system. Finally, after many months of deliberations, Congress passed this measure shortly before adjourning in December. Federal employees and retirees who had been waiting 7 months for passage of this measure, believed that their premium refunds would be in the mail shortly.

Unfortunately, this long awaited measure was recently vetoed by the President. While enthusiastically supporting the health insurance premium rebates, the President objected to provisions in the legislation lifting the existing cap on the Government's share of contributions to the health insurance premiums.

Mr. President, over 2 million Federal employees and retirees have now been waiting over 8 months to receive their premium rebates. These individuals have been patiently waiting for Congress and the President to enact legislation that would correct an oversight in existing law and provide retirees as well as employees with premium refunds. Eight months is an unacceptable length of time to wait for enactment of legislation which enjoys overwhelming bipartisan support.

Therefore Mr. President, I am introducing legislation along with Senators COHEN and WARNER, which I hope will be enacted quickly. The legislation incorporates nearly all provisions of the final version of the health insurance rebate bill which passed Congress in December. However, this measure addresses the concerns which prompted the President to veto the rebate bill, by eliminating the language regarding Government contributions.

In addition to providing authority for retirees to receive rebates, this legislation provides for open seasons before the start of any contract year in which there are changes in the Federal Employees Health Benefits Program. Additional modifications are made in the Federal Health Program including reinstatement of authority to make payments to nonmedical health care providers in medically underserved areas.

My legislation also incorporates modifications in the civil service retirement system. A number of technical clarificaitons are made to the Civil Service Retirement Spouse Equity Act of 1984 regarding benefits for former spouses. And, this measure includes provisions I originally introduced to give Federal retirees a second chance to provide survivor benefits for their spouse.

I urge my colleagues to support this measure and join with me in pressing for immediate passage of this legislation. We must not require Federal employees and retirees to continue to wait for the legislation needed to provide them with rebates.

I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2020

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Federal Employees Benefits Improvement Act of 1986".

TITLE I—FEDERAL EMPLOYEE HEALTH BENEFITS

SEC. 101. AUTHORITY TO PAY CERTAIN HEALTH CARE PROFESSIONALS.

(a) DEFINITIONS.—Section 8901 of title 5, United States Code, is amended—

(1) by striking out "and" at the end of paragraph (9);

(2) by striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon; and

(3) by adding at the end thereof the following new paragraphs:

"(11) 'certified nurse-midwife' has the same meaning given to such term in section 1905(m) of the Social Security Act; and

"(12) 'qualified clinical social worker' means an individual—

"(A) who is licensed or certified as a clinical social worker by the State in which such individual practices; or

"(B) who, if such State does not provide for the licensing or certification of clinical social workers—

"(i) is certified by a national professional organization offering certification of clinical social workers; or

"(ii) meets equivalent requirements (as prescribed by the Office).".

(b) NURSES AND NURSE-MIDWIVES.—Section 8902(k) of title 5, United States Code, is amended by striking out "or optometrist" each place it appears and inserting in lieu thereof ", optometrist, nurse, or certified nurse-midwife".

(c) CLINICAL SOCIAL WORKERS.—Section 8902(k) of title 5, United States Code, is further amended—

(1) by striking out "(k)" and inserting in lieu thereof "(k)(1)";

(2) by striking out the last sentence; and

(3) by inserting at the end thereof the following:

"(2) When a contract under this chapter requires payment or reimbursement for services which may be performed by a qualified clinical social worker, an employee, annuitant, family member, or former spouse covered by the contract shall be entitled under the contract to have payment or reimbursement made to him or on his behalf for the services performed. As a condition for the payment or reimbursement, the contract—

"(A) may require that the services be performed pursuant to a referral by a psychiatrist; but

"(B) may not require that the services be performed under the supervision of a psychiatrist or other health practitioner.

"(3) The provisions of this subsection shall not apply to group practice prepayment plans.".

(d) EFFECTIVE DATES.—The amendments made by subsections (a), (b), and (c) shall be effective with respect to contracts entered into or renewed for calendar years beginning after December 31, 1986.

SEC. 102. ELIMINATION OF REQUIREMENT OF THREE MEDICAL SPECIALTIES FOR GROUP-PRACTICE PREPAYMENT PLANS.

The second sentence of section 8903(4)(A) of title 5, United States Code, is amended to read as follows: "The group shall include at least 3 physicians who receive all or a substantial part of their professional income from the prepaid funds and who represent 1 or more medical specialties appropriate and necessary for the population proposed to be served by the plan.".

SEC. 103. AUTHORITY TO WAIVE CERTAIN ELIGIBILITY REQUIREMENTS.

Section 8905(b) of title 5, United States Code, is amended by adding at the end thereof the following new sentence: "The Office may, in its sole discretion, waive the requirements of this subsection in the case of an individual who fails to satisfy such requirements if the Office determines that, due to exceptional circumstances, it would be against equity and good conscience not to allow such individual to be enrolled as an annuitant in a health benefits plan under this subchapter.".

SEC. 104. ANNUAL OPEN SEASON.

(a) IN GENERAL.—Section 8905(f) of title 5, United States Code, is amended to read as follows:

"(f)(1) Under regulations prescribed by the Office, the Office shall, before the start of any contract term in which—

"(A) an adjustment is made in any of the rates charged or benefits provided under a health benefits plan described by section 8903 or 8903a of this title,

"(B) a newly approved health benefits plan is offered, or

"(C) an existing plan is terminated,

provide a period of not less than 3 weeks during which any employee, annuitant, or former spouse enrolled in a health benefits plan described by such section shall be permitted to transfer that individual's enrollment to another such plan or to cancel such enrollment.

"(2) In addition to any opportunity afforded under paragraph (1) of this subsection, an employee, annuitant, or former spouse enrolled in a health benefits plan under this chapter shall be permitted to transfer that individual's enrollment to another such plan, or to cancel such enrollment, at such other times and subject to such conditions as the Office may prescribe in regulations.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective with respect to contracts entered into or renewed for calendar years beginning after December 31, 1986.

SEC. 105. AUTHORITY TO REFUND CERTAIN CONTRIBUTIONS TO ENROLLEES.

The last sentence of section 8909(b) of title 5, United States Code, is amended by striking out "employees" and inserting in lieu thereof "enrollees".

SEC. 106. HEALTH SERVICES FOR MEDICALLY UNDERSERVED POPULATIONS.

(a) IN GENERAL.—(1) Section 3 of the Act entitled "An Act to amend chapter 89 of title 5, United States Code, to establish uniformity in Federal employee health benefits and coverage by preempting certain State or local laws which are inconsistent with such contracts, and for other purposes", approved September 17, 1978 (Public Law 95-368; 92 Stat. 606; 5 U.S.C. 8902 note), is amended by striking out "; except that such provisions shall not apply to services provided after December 31, 1984".

(2) Section 5(b) of the Act entitled "An Act to amend the provisions of chapters 83 and 89 of title 5, United States Code, which relate to survivor benefits for certain dependent children, and for other purposes", approved January 2, 1980 (Public Law 96-179; 93 Stat. 1300; 5 U.S.C 8902 note), is amended by striking out "and before January 1, 1985,".

(3) Section 8902(m)(2)(A) of title 5, United States Code, is amended by adding at the end thereof the following: "This paragraph shall apply with respect to a qualified clinical social worker covered by subsection (k)(2) of this section without regard to whether such contract contains the requirement authorized by clause (i) of the second sentence of subparagraph (A) of such subsection (k)(2).".

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect with respect to services provided after December 31, 1984.

SEC. 107. MENTAL HEALTH, ALCOHOLISM, AND DRUG ADDICTION BENEFITS.

(a) FINDINGS.—The Congress finds that—

(1) the treatment of mental illness, alcoholism, and drug addiction are basic health care services which are needed by approximately 40,000,000 Americans each year;

(2) treatment of mental illness, alcoholism, and drug addiction is increasingly successful;

(3) timely and appropriate treatment of mental illness, alcoholism, and drug addiction is cost effective in terms of restored productivity, reduced utilization of other health services, and reduced social dependence; and

(4) mental illness is a problem of grave concern to the people of the United States and is widely but unnecessarily feared and misunderstood.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress—

(1) that participants in the Federal employees health benefits program should receive adequate benefits coverage for treatment of mental illness, alcoholism, and drug addiction; and

(2) that the Office of Personnel Management should encourage participating health benefits plans to provide adequate benefits relating to treatment of mental illness, alcoholism, and drug addiction (including benefits relating to coverage for inpatient and outpatient treatment and catastrophic protection benefits).

SEC. 108. STUDY OF THE ADEQUACY OF HEALTH BENEFITS PROGRAM INFORMATION.

(a) IN GENERAL.—Not later than March 1, 1986, the Office of Personnel Management shall (1) study the adequacy of any sources or methods currently provided under chapter 89 of title 5, United States Code, to assist individuals in making informed decisions concerning the choice of a health benefits plan under such chapter and the use of benefits available under any such plan, and (2) submit to the Committee on Post Office and Civil Service of the House of Representatives and the Committee on Governmental Affairs of the Senate a report on the findings and determinations of the Office resulting from such study.

(b) REPORT REQUIREMENTS.—The report required by subsection (a) shall include—

(1) an assessment of the adequacy of the sources and methods referred to in such subsection in advising individuals with respect to the coordination of benefits under chapter 89 of title 5, United States Code, with benefits available under other health insurance programs established by or under Federal law, including title XVIII of the Social Security Act; and

(2) the administrative actions and any recommendations for legislation which the Office considers necessary in order to improve the effectiveness of any such source or method.

SEC. 109. DEMONSTRATION PROJECT.

(a) DEFINITIONS.—For the purposes of this section—

(1) "health protection" means activities to minimize environmental and other workplace conditions which cause or aggravate stress, illness, disability, or other health impairments, including such activities as—

(A) accommodation of the handicapped;

(B) review of plans for new or altered facilities;

(C) routine inspections, surveys, studies of worksites;

(D) inspections of worksites by a physician, nurse, or other licensed health professional with training in occupational safety and health;

(E) evaluation and monitoring of worksite hazards; and

(F) investigations of causes of occupational disease or injury;

(2) "health promotion" means activities to encourage the development of health enhancing habits and practices, including activities encouraging—

(A) cessation of tobacco smoking;

(B) reduction in the misuse of alcohol, drugs, and other chemical substances;

(C) improvements in nutrition;

(D) improvements in physical fitness, including weight reduction; and

(E) control of stress;

(3) "disease prevention" means activities to prevent unnecessary illnesses, morbidity, disability, and medical treatment, including—

(A) occupationally related examinations;

(B) general health assessments;

(C) biological monitoring;

(D) immunizations, chemoprophylaxis, fitting respirators and hearing protectors, use of barrier creams, control of high blood pressure, control of sexually transmittable diseases, care to improve pregnancy outcome, control of toxic agents, control or elimination of hazards leading to accidental injuries, control of infectious agents, and other health intervention activities; and

(E) referral to private physicians, dentists, and other licensed health professionals;

(4) "secondary prevention" means—

(A) activities to provide on-the-job emergency health and dental care and assistance, and

(B) rehabilitation or follow-up care after emergency care,

to reduce morbidity, disability, lost productivity, and medical treatment.

(b) IN GENERAL.—The Director of the Office of Personnel Management, in consultation with the Secretary of Health and Human Services, shall establish and carry out at least one demonstration project to determine—

(1) the most effective (including cost-effective) means of—

(A) furnishing health protection, health promotion, disease prevention, and secondary prevention services to Federal Government employees;

(B) encouraging such employees to adopt good health habits;

(C) reducing health risks to such employees, particularly the risks of heart disease, cancer, stroke, diabetes, anxiety, depression, and lifestyle-related accidents;

(D) reducing medical expenses of such employees through health protection, health promotion, disease prevention, and secondary prevention activities;

(E) enhancing employee productivity and reducing health related liability of the Federal Government through a comprehensive occupational health program; and

(F) carrying out a program—

(i) to train employees under the jurisdiction of a Federal Government agency to furnish health protection, health promotion, disease prevention, and secondary prevention services to employees of such agency; and

(ii) to promote interagency agreements under which trained employees of an agency are available to furnish such services to employees of other Federal Government agencies, subject to reimbursement of the costs of the agency in making the trained employees available; and

(2) the cost effectiveness of organizational structures and of social and educational programs which may be useful in achieving the objectives described in clause (1).

(c)(1) CONDUCT OF THE DEMONSTRATION PROJECT.—The demonstration project described in subsection (b) shall be conducted in cooperation with at least one—

(A) health profession school;

(B) allied health profession or nurse training institution; or

(C) public or private entity which provides health care.

(2)(A) The Director of the Office of Personnel Management, in consultation with the Secretary of Health and Human Services, may enter into contracts with, or make grants to, any school of medicine, school of osteopathy, school of public health, school of nursing, health maintenance organization, or other qualified health care provider for the purpose of carrying out the demonstration project described in subsection (b).

(B) The authority of the Director of the Office of Personnel Management to enter into contracts or to make grants under subparagraph (A) is effective for fiscal year 1986 and subsequent fiscal years only to such extent or in such amounts as are provided in appropriation Acts.

(C) For the purposes of this paragraph, the terms "school of medicine" and "school of osteopathy" have the same meanings as provided for such terms in section 701(4) of the Public Health Service Act (42 U.S.C. 292a(4)).

(d) REPORT.—Not later than 60 days after the date the demonstration project required by subsection (b) terminates, the Director of the Office of Personnel Management, in consultation with the Secretary of Health and Human Services, shall submit to Congress a report on the project.

(e) ESTABLISHMENT AND TERMINATION REQUIREMENTS.—The demonstration project required by subsection (b) shall be established not later than 6 months after the date of enactment of this Act and shall terminate on the date 2 years after such date of enactment.

SEC. 110. ADDITIONAL TYPE OF HEALTH BENEFITS PLAN.

Paragraph (4) of section 8903 of title 5, United States Code, is amended by adding at the end thereof the following new subparagraph:

"(C) MIXED MODEL PREPAYMENT PLANS.—Mixed model prepayment plans which are a combination of the type of plans described in subparagraph (A) and the type of plans described in subparagraph (B).".

SEC. 111. RESTRICTIONS RELATING TO AMOUNTS REFUNDED TO THE EMPLOYEES HEALTH BENEFITS FUND FROM CARRIERS' SPECIAL RESERVES.

(a) PROHIBITED TRANSFERS.—(1) No amount in the Employees Health Benefits Fund may be transferred to the general fund of the Treasury of the United States or the United States Postal Service as a result of a refund described in paragraph (2).

(2) This subsection applies with respect to any refund made by a carrier during fiscal year 1986 or 1987 to the Employees Health Benefits Fund to the extent that such refund represents amounts in excess of the minimum level of financial reserves necessary to be held by such carrier to ensure the stable and efficient operation of its health benefits plan.

(b) RESTRICTION RELATING TO USE OF CERTAIN AMOUNTS IN THE FUND.—(1) Any amount which is in the Employees Health Benefits Fund, and which is described in paragraph (2), may be used solely for the purpose of paying the Government contribution under chapter 89 of title 5, United States Code, for health benefits for annuitants enrolled in health benefits plans.

(2) This subsection applies with respect to any amounts—

(A) which are referred to in subsection (a)(2); and

(B) which are attributable to Government contributions (other than contributions by the government of the District of Columbia) that were made under section 8906(b) of title 5, United States Code, as determined under regulations which the Office of Personnel Management shall prescribe.

(c) DEFINITIONS.—For the purpose of this section—

(1) the term "Employees Health Benefits Fund" refers to the fund described in section 8909(a) of title 5, United States Code;

(2) the term "carrier" has the meaning given such term by section 8901(7) of such title; and

(3) the term "health benefits plan" has the meaning given such term by section 8901(6) of such title.

TITLE II—CIVIL SERVICE SPOUSE AND FORMER SPOUSE EQUITY IMPROVEMENTS

SEC. 201. REVISION OF THE APPLICATION AND SPECIAL ELECTIONS PROVISIONS OF THE CIVIL SERVICE RETIREMENT SPOUSE EQUITY ACT OF 1984.

(a) APPLICATION.—Section 4(a) of the Civil Service Retirement Spouse Equity Act of 1984 (Public Law 98-615; 98 Stat. 3204) is amended to read as follows:

"(a)(1) Except as provided in paragraphs (3), (4), (5), and (6) and subsections (b) and (c), the amendments made by section 2 of this Act shall take effect May 7, 1985, and shall apply—

"(A) to any individual who, on or after such date, is married to an employee or Member who, on or after such date, retires, dies, or applies for a refund of contributions under subchapter III of chapter 83 of title 5, United States Code, and

"(B) to any individual who, as of such date, is married to a retired employee or Member,

unless (i) such employee or Member has waived, under the first sentence of section 8339(j)(1) of such title (or a similar prior provision of law), the right of that individual's spouse to receive a survivor annuity, or (ii) in the case of a post-retirement marriage or remarriage, an election has not been made before such date by such employee or Member with respect to such individual under the applicable provisions of section 8339(j)(1) or 8339(k)(2) of such title, as the case may be (or a similar prior provision of law).

"(2) Except as provided in subsection (f), the amendments made by section 3 of this Act shall take effect May 7, 1985, and shall apply to any individual who, on or after such date, is married to an employee or annuitant.

"(3) The amendments made by subparagraphs (B)(iii) and (C)(ii) of section 2(4) of this Act (relating to the termination of survivor benefits for a widow or widower who remarries before age 55) and the amendments made by subparagraph (F) of such section 2(4) (relating to the restoration of a survivor annuity upon the dissolution of such a remarriage) shall apply—

"(A) in the case of a remarriage occurring on or after the date of the enactment of this Act; and

"(B) with respect to periods beginning on or after such date.

"(4)(A) Except as provided in subparagraph (B), the amendment made by section 2(3)(A) of this Act (but only to the extent that it amends title 5, United States Code, by adding a new section 8339(j)(5)(C)) and the amendment made by section 2(3)(C) of this Act (which relate to the election of a survivor annuity for a spouse in the case of a post-retirement marriage or remarriage) shall apply—

"(i) to an employee or Member who retires before, on, or after May 7, 1985; and

"(ii) in the case of a marriage occurring on or after May 7, 1985.

"(B) The amendments referred to in subparagraph (A) shall not apply in the case of a marriage of an employee or Member retiring before May 7, 1985, if the marriage occurred after May 6, 1985, and before the date of the enactment of the Federal Employees Benefits Improvement Act of 1986.

"(C) Any election by an employee or Member described in subparagraph (B) to provide a survivor annuity for that individual's spouse by a marriage described in such subparagraph shall be effective if made in accordance with the applicable provisions of section 8339(j)(1) or 8339(k)(2) of title 5, United States Code, as the case may be, as in effect on May 6, 1985.

"(5)(A) Paragraphs (2), (3), (4), and (5)(B) of section 8339(j) of title 5, United States Code (as added by section 2(3)(A) of this Act), shall apply in the case of a former spouse of an employee or Member whose marriage to such employee or Member terminated before May 7, 1985, if such employee or Member retires on or after such date.

"(B)(i) The requirement described in clause (ii) shall not apply to an election made by an employee or Member under section 8339(j)(3) of title 5, United States Code (as amended by section 2(3)(A) of this Act), in order to provide a survivor annuity under section 8341(h) of such title (as amended by section 2(4)(G) of this Act) in the case of a former spouse referred to in subparagraph (A) if the election meets the requirements of clause (iii).

"(ii) The requirement referred to in clause (i) is the requirement prescribed in section 8339(j)(3) of title 5, United States Code, for an employee or Member to make an election in the case of a former spouse under such section 8339(j)(3) at the time of retirement or, if later, within 2 years after the date on

which the marriage of the former spouse to the employee or Member is dissolved.

"(iii) Clause (i) applies to an election which is made by an employee or Member who retires on or after May 7, 1985, and before the date of the enactment of the Federal Employees Benefits Improvement Act of 1986, and is received by the Office of Personnel Management within the 2-year period beginning on the date of the enactment of such Act.

"(C) A survivor annuity shall be paid a former spouse as provided in section 8341(h) of title 5, United States Code (as amended by section 2(4)(G) of this Act), pursuant to an election made in the case of such former spouse under this paragraph.

"(D) The amendments made by paragraphs (6) and (7) of section 2 of this Act shall apply in the case of survivor annuities and elections authorized by this paragraph.

"(6) The amendment made by section 2(4)(A) of this Act (relating to the definition of a widow or widower) and the amendment made by section 2(4)(G) of this Act (but only to the extent that it amends title 5, United States Code, by adding a new section 8341(i)) shall apply with respect to any marriage occurring on or after the date of the enactment of this Act.".

(b) ENTITLEMENT OF A FORMER SPOUSE IN CASE OF RETIREMENT OR DEATH OF AN EMPLOYEE OR MEMBER BEFORE THE EFFECTIVE DATE.—Section 4(b) of the Civil Service Retirement Spouse Equity Act of 1984 (Public Law 98-615; 98 Stat. 3205) is amended—

(1) in paragraph (1)—

(A) by striking out "the one hundred and eightieth day after the date of enactment of this Act" in the matter before subparagraph (A) and inserting in lieu thereof "May 7, 1985, or who died after becoming eligible to retire and before such date,";

(B) by striking out "retired" in the matter before clause (i) in subparagraph (B); and

(C) by striking out clause (iii) in subparagraph (B) and by redesignating clauses (iv), (v), and (vi) of such subparagraph as clauses (iii), (iv), and (v), respectively; and

(2) by redesignating paragraph (4) as paragraph (5);

(3) by inserting after paragraph (3) the following new paragraph (4):

"(4)(A) A former spouse of an employee or Member referred to in the matter before subparagraph (A) in paragraph (1) of this section shall be entitled to a survivor annuity under subparagraph (B) of such paragraph if—

"(i) the former spouse satisfies the requirements of clauses (ii) through (v) of such subparagraph (B); and

"(ii) there is no surviving spouse of the employee or Member and no other former spouse of such employee or Member who is entitled to receive a survivor annuity under subchapter III of chapter 83 of title 5, United States Code, based on the service of such employee or Member which is creditable under such subchapter and there is no other person who has been designated to receive a survivor annuity under such subchapter by reason of an insurable interest in such employee or Member.

"(B) For the purposes of this paragraph, the term 'surviving spouse' means a widow or a widower as defined in paragraphs (1) and (2), respectively, of section 8341(a) of title 5, United States Code."; and

(4) in paragraph (5), as redesignated by clause (2) of this subsection—

(A) by striking out "Member," in the matter before subparagraph (A) and inserting in lieu thereof "Member (or of that portion of the annuity which such employee or Member may have designated for this purpose under paragraph (1)(A) of this subsection),"; and

(B) by striking out "section 8341(b)(4)" in the matter following subparagraph (B) and inserting in lieu thereof "section 8341(h)(2)".

(c) ELIGIBILITY OF CERTAIN FORMER SPOUSES TO ENROLL IN A FEDERAL EMPLOYEES HEALTH BENEFITS PLAN.—(1) The first sentence of section 4(f) of the Civil Service Retirement Spouse Equity Act of 1984 is amended to read as follows: "Any individual—

"(1) who is entitled to a survivor annuity under subsection (b) of this section or pursuant to an election authorized by reason of the application of subsection (a)(5) of this section,

"(2) as to whom a court order or decree referred to in section 8345(j) of title 5, United States Code (or similar provision of law under a retirement system for Government employees other than the Civil Service Retirement System) has been issued before May 7, 1985, or

"(3) who is entitled (other than as described in paragraph (2)) to an annuity or any portion of an annuity as a former spouse under a retirement system for Government employees as of May 7, 1985,

shall be considered to have satisfied section 8901(10)(C) of title 5, United States Code, as amended by this Act.".

(2) The second sentence of such section 4(f) is amended—

(A) by inserting ", within 12 months after the date of the enactment of the Federal Employees Benefits Improvement Act of 1986," before "enroll"; and

(B) by inserting before the period at the end the following: "(other than the conditions prescribed in subparagraphs (A) and (B) of paragraph (1) of such section 8905(c))".

(d) ADDITIONAL ELECTION.—(1) Notwithstanding the time limitation prescribed in subparagraph (A) of section 4(b)(1) of the Civil Service Retirement Spouse Equity Act of 1984, an election may be made under such subparagraph before the expiration of the 12-month period beginning on the date on which the regulations under paragraph (3) of this subsection first take effect.

(2) Any retired employee or Member who has made an election under section 4(b)(1)(A) of the Civil Service Retirement Spouse Equity Act of 1984 (as in effect at the time of such election) before the regulations under paragraph (3) of this subsection become effective may modify such election by designating, in writing, that only a portion of such employee or Member's annuity is to be used as the base for the survivor annuity for the former spouse for whom the election was made. A modification under this subparagraph shall be subject to the deadline under paragraph (1) of this subsection.

(3) The Office of Personnel Management shall prescribe regulations to carry out this subsection, including regulations under which an appropriate refund shall be made in the case of a modification under paragraph (2) of this subsection.

SEC. 202. CREDIT FOR MILITARY SERVICE.

Section 8332(j)(1) of title 5, United States Code, is amended by striking out "widow" each place it appears and inserting in lieu thereof "spouse, former spouse".

SEC. 203. ANNUITY REDUCTIONS.

(a) IRREVOCABILITY OF A JOINT SPOUSAL WAIVER.—Section 8339(j)(3) of title 5, United States Code, is amended by inserting ", unless all rights to survivor benefits for such former spouse under this subchapter based on marriage to such employee or Member were waived under paragraph (1) of this subsection" before the period at the end of the first sentence.

(b) REPLACEMENT OF TERMINATED REDUCTION.—Section 8339(j)(5)(B) of title 5, United States Code, is amended to read as follows:

"(B) Any reduction in an annuity for the purpose of providing a survivor annuity for a former spouse of a retired employee or Member shall be terminated for each full month after the former spouse remarries before reaching age 55 or dies. This reduction shall be replaced by an appropriate reduction or reductions under paragraph (4) of this subsection if the retired employee or Member has (i) another former spouse who is entitled to a survivor annuity under section 8341(h) of this title, (ii) a current spouse to whom the employee or Member was married at the time of retirement and with respect to whom a survivor annuity was not jointly waived under paragraph (1) of this subsection, or (iii) a current spouse whom the employee or Member married after retirement and with respect to whom an election has been made under subparagraph (C) of this paragraph or subsection (k)(2) of this section.".

(c) ELECTIONS RELATING TO A SURVIVOR ANNUITY FOR A PERSON WHO HAS AN INSURABLE INTEREST IN AN ANNUITANT.—(1) Section 8339(j)(5)(C) of title 5, United States Code, is amended by adding at the end thereof the following:

"(v) An election to provide a survivor annuity to a person under this subparagraph—

"(I) shall prospectively void any election made by the employee or Member under subsection (k)(1) of this section with respect to such person; or

"(II) shall, if an election was made by the employee or Member under such subsection (k)(1) with respect to a different person, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this subparagraph.

"(vi) The deposit provisions of clauses (ii) and (iii) of this subparagraph shall not apply if—

"(I) the employee or Member makes an election under this subparagraph after having made an election under subsection (k)(1) of this section; and

"(II) the election under such subsection (k)(1) becomes void under clause (v) of this subparagraph.".

(2) Section 8339(k)(1) of such title is amended by adding at the end thereof the following: "In the case of a married employee or Member, an election under this paragraph on behalf of the spouse may be made only if any right of such spouse to a survivor annuity based on the service of such employee or Member is waived in accordance with subsection (j)(1) of this section.".

(3) Paragraph (2) of section 8339(k) of such title is amended—

(A) by striking out subparagraph (B)(i) and inserting in lieu thereof the following:

"(B)(i) The election and reduction shall take effect on the first day of the first month beginning after the expiration of the 9-month period beginning on the date of marriage. Any such election to provide a survivor annuity for a person—

"(I) shall prospectively void any election made by the employee or Member under

paragraph (1) of this subsection with respect to such person; or

"(II) shall, if an election was made by the employee or Member under such paragraph with respect to a different person, prospectively void such election if appropriate written application is made by such employee or Member at the time of making the election under this paragraph.";

(B) by striking out "(other than an employee or Member who made a previous election under paragraph (1) of this subsection)" in subparagraph (B)(ii); and

(C) by adding at the end thereof the following new subparagraph (D):

"(D) Subparagraphs (B)(ii) and (C) of this paragraph shall not apply if—

"(i) the employee or Member makes an election under this paragraph after having made an election under paragraph (1) of this subsection; and

"(ii) the election under such paragraph (1) becomes void under subparagraph (B)(i) of this paragraph.".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect May 7, 1985.

SEC. 204. PRORATED COST-OF-LIVING ADJUSTMENTS FOR THE FIRST YEAR.

Section 8340(c)(1) of title 5, United States Code, is amended—

(1) by striking out "or widower" the first time it appears and inserting in lieu thereof ", widower, or former spouse,"; and

(2) by striking out "or widower" the second and third time it appears and inserting in lieu thereof ", widower, former spouse, or insurable interest designee".

SEC. 205. SURVIVOR BENEFITS FOR CHILDREN.

(a) EQUITABLE SURVIVOR ANNUITIES FOR SURVIVING CHILDREN.—Section 8341(e) of title 5, United States Code, is amended—

(1) by redesignating paragraphs (1) and (2) as paragraphs (2) and (3), respectively; and

(2) by inserting before paragraph (2), as redesignated by clause (1), the following new paragraph:

"(1) For the purposes of this subsection, 'former spouse' includes a former spouse who was married to an employee or Member for less than 9 months and a former spouse of an employee or Member who completed less than 18 months of service covered by this subchapter.".

(b) INDIVIDUAL DETERMINATION OF SURVIVOR ANNUITY AMOUNT.—Section 8341(e)(2) of title 5, United States Code, as redesignated by subsection (a)(1) of this section, is amended by striking out "each surviving child" both times it appears and inserting in lieu thereof "that surviving child".

SEC. 206. DEFERRED ANNUITIES FOR FORMER SPOUSES OF FORMER MEMBERS OF CONGRESS.

Section 8341(h)(1) of title 5, United States Code, is amended by striking out "or annuitant" and inserting in lieu thereof "annuitant, or former Member who was separated from the service with title to a deferred annuity under section 8338(b) of this title".

SEC. 207. CHANGES IN COURT ORDERS AFTER DEATH.

Section 8341(h)(4)(A) of title 5, United States Code, is amended by inserting "or death" after "retirement".

SEC. 208. EFFECT OF A SEPARATION AGREEMENT ON REFUND OF A LUMP-SUM CREDIT.

Section 8342(j)(1)(B) of title 5, United States Code, is amended to read as follows:

"(B) shall be subject to the terms of a court decree of divorce, annulment, or legal separation or any court order or court approved property settlement agreement incident to such decree if—

"(i) the decree, order, or agreement expressly relates to any portion of the lump-sum credit involved; and

"(ii) payment of the lump-sum credit would extinguish entitlement of the employee's or Member's spouse or former spouse to a survivor annuity under section 8341(h) of this title or to any portion of an annuity under section 8345(j) of this title.".

TITLE III—MISCELLANEOUS CIVIL SERVICE AMENDMENTS

SEC. 301. RECEPTION AND REPRESENTATION EXPENSES OF THE OFFICE OF PERSONNEL MANAGEMENT.

Section 1103(a) of title 5, United States Code, is amended—

(1) by striking out "and" after paragraph (7);

(2) by striking out the period after paragraph (8) and by inserting in lieu thereof "; and"; and

(3) by inserting after paragraph (8) the following:

"(9) incurring official reception and representation expenses of the Office subject to any limitation prescribed in any law.".

SEC. 302. EXCEPTION TO NOTICE REQUIREMENTS FOR ROUTINE PAY MATTERS.

Section 1103(b) of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

"(4) Paragraphs (1) and (2) of this subsection and section 1105 of this title shall not apply to the establishment of any schedules or rates of basic pay or allowances under subpart D of part III of this title. The preceding sentence does not apply to the establishment of the procedures, methodology, or criteria used to establish such schedules, rates, or allowances.".

SEC. 303. PREDEPARTURE ALLOWANCE.

Section 5924(2)(A) of title 5, United States Code, is amended by inserting after "United States" the following: ", its territories or possessions, the Commonwealth of Puerto Rico, or the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements".

SEC. 304. DENTAL CARE IN GOVERNMENT MEDICAL FACILITIES OVERSEAS.

The second sentence of section 5 of the Act of May 10, 1943 (24 U.S.C. 35; 57 Stat. 81) is amended to read as follows: "Routine dental care, other than dental prosthesis and orthodontia, may be furnished to such persons who are outside the naval service under the same conditions as are prescribed in section 4 of this Act for hospital and dispensary care for such persons.".

SEC. 305. MINIMUM ANNUITY UNDER THE CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEM.

(a) REPEAL.—Section 8345(f) of title 5, United States Code, is repealed.

(b) SAVINGS PROVISION.—An annuity payable from the Civil Service Retirement and Disability Fund as of the day before the date of enactment of this Act shall not be reduced—

(1) by reason of the repeal of section 8345(f) of title 5, United States Code; or

(2) if or to the extent that the reduction is to be made for the purpose of eliminating an overpayment resulting from the manner in which such section 8345(f) has been administered by the Office of Personnel Management.

(c) RATIFICATION OF ERRONEOUS PAYMENTS.—Any individual to whom an overpayment of an annuity has been made from the Civil Service Retirement and Disability Fund before the date of enactment of this Act shall be deemed to have been entitled to that overpayment if and to the extent that such overpayment resulted from the manner in which the Office of Personnel Management has administered section 8345(f) of title 5, United States Code.

(d) ADJUSTMENTS OF CERTAIN REDUCTIONS.—(1) Effective for any month after the date of enactment of this Act, the amount of any annuity which—

(A) is payable from the Civil Service Retirement and Disability Fund; and

(B) was reduced after June 30, 1985, and before the date of enactment of this Act, to eliminate any overpayment resulting from the manner in which the Office of Personnel Management administered section 8345(f) of title 5, United States Code,

shall not be less than the amount which would have been payable as of such date of enactment if the reduction described in clause (B) had not been made.

(2)(A) The Office shall make a lump-sum payment to each individual receiving an annuity to which paragraph (1) applies.

(B) The lump-sum payment made to any individual under this paragraph shall be equal to the excess of—

(i) the total amount of the annuity payments which would have been made to the individual for the period beginning with the first month in which the reduction described in paragraph (1)(B) was made and ending on the last day of the month in which this Act is enacted if the reduction had not been made, over

(ii) the total amount of the annuity payments which have been paid to such individual for that period.

SEC. 306. CIVIL SERVICE BENEFITS FOR FORMER EMPLOYEES OF COUNTY COMMITTEES.

(a) RETENTION.—Section 3502(a)(C) of title 5, United States Code, is amended by striking out "who is an employee in or under the Department of Agriculture".

(b) RATE OF PAY ON CHANGE OF POSITION.—Section 5334(e) of title 5, United States Code, is amended—

(1) by inserting a comma after "may"; and

(2) by striking out "under the Department of Agriculture,".

(c) ACCRUAL AND ACCUMULATION OF LEAVE.—The first sentence of section 6312 of title 5, United States Code, is amended by striking out "in the case of any officer or employee in or under the Department of Agriculture".

SEC. 307. 18-MONTH PERIOD TO ELECT A SURVIVOR ANNUITY UNDER THE CIVIL SERVICE RETIREMENT AND DISABILITY SYSTEM.

(a) IN GENERAL.—Section 8339 of title 5, United States Code, is amended by adding at the end thereof the following:

"(o)(1)(A) An employee or Member—

"(i) who, at the time of retirement, is married, and

"(ii) who notifies the Office at such time (in accordance with subsection (j)) that a survivor annuity under section 8341(b) of this title is not desired,

may, during the 18-month period beginning on the date of the retirement of such employee or Member, elect to have a reduction under subsection (j) made in the annuity of the employee or Member (or in such portion thereof as the employee or Member may designate) in order to provide a survivor annuity for the spouse of such employee or Member.

"(B) An employee or Member—

"(i) who, at the time of retirement, is married, and

"(ii) who at such time designates (in accordance with subsection (j)) that a limited portion of the annuity of such employee or Member is to be used as the base for a survivor annuity under section 8341(b) of this title,

may, during the 18-month period beginning on the date of the retirement of such employee or Member, elect to have a greater portion of the annuity of such employee or Member so used.

"(2)(A) An election under subparagraph (A) or (B) of paragraph (1) of this subsection shall not be considered effective unless the amount specified in subparagraph (B) of this paragraph is deposited into the Fund before the expiration of the applicable 18-month period under paragraph (1).

"(B) The amount to be deposited with respect to an election under this subsection is an amount equal to the sum of—

"(i) the additional cost to the System which is associated with providing a survivor annuity under subsection (b)(2) of this section and results from such election taking into account (I) the difference (for the period between the date on which the annuity of the participant or former participant commences and the date of the election) between the amount paid to such participant or former participant under this subchapter and the amount which would have been paid if such election had been made at the time the participant or former participant applied for the annuity, and (II) the costs associated with providing for the later election; and

"(ii) interest on the additional cost determined under clause (i) of this subparagraph computed using the interest rate specified or determined under section 8334(e) of this title for the calendar year in which the amount to be deposited is determined.

"(3) An election by an employee or Member under this subsection voids prospectively any election previously made in the case of such employee or Member under subsection (j).

"(4) An annuity which is reduced in connection with an election under this subsection shall be reduced by the same percentage reductions as were in effect at the time of the retirement of the employee or Member whose annuity is so reduced.

"(5) Rights and obligations resulting from the election of a reduced annuity under this subsection shall be the same as the rights and obligations which would have resulted had the employee or Member involved elected such annuity at the time of retiring.

"(6) The Office shall, on an annual basis, inform each employee or Member who is eligible to make an election under this subsection of the right to make such election and the procedures and deadlines applicable to such election.".

(b) EFFECTIVE DATE AND APPLICATION.—(1) The amendment made by subsection (a) shall take effect 3 months after the date of the enactment of this Act.

(2)(A) Subject to subparagraph (B), the amendment made by subsection (a) shall apply with respect to employees and Members who retire before, on, or after such amendment first takes effect.

(B) For the purpose of applying the provisions of paragraph (1) of section 8339(o) of title 5, United States Code (as added by subsection (a) of this section) to employees and Members who retire before the date on which the amendment made by subsection (a) first takes effect—

(i) the period referred to in subparagraph (A) or (B) of such paragraph (as the case may be) shall be considered to begin on the date on which such amendment first becomes effective; and

(ii) the amount referred to in paragraph (2) of such section 8339(o) shall be computed without regard to the provisions of subparagraph (B)(ii) of such paragraph (relating to interest).

(3) For purposes of this subsection, the terms "employee" and "Member" each has the meaning given that term in sections 8331(1) and 8331(2) of title 5, United States Code, respectively.

By Mr. TRIBLE (for himself and Mr. ARMSTRONG):

S. 2021. A bill to authorize humanitarian assistance for the National Union for Total Independence of Angola [UNITA]; to the Committee on Foreign Relations.

U.S. ASSISTANCE TO ANTI-COMMUNIST REBELS IN ANGOLA

Mr. TRIBLE. Mr. President, today I have introduced legislation on behalf of myself and Mr. ARMSTRONG, authorizing much-needed humanitarian assistance to the anti-Communist rebel forces under Jonas Savimbi—the National Union for the Total Independence of Angola [UNITA]. This action will serve as another symbol of America's resolve to assist those resisting Communist oppression.

Last year, the Congress took an important step by repealing the Clark amendment. Today and in the days ahead, it is crucial that we take the additional step of providing direct aid to the anti-Communist freedom fighters under Jonas Savimbi.

Only in the past several years has the United States been willing to provide visible, substantial assistance to freedom fighters around the world. In Afghanistan and in Nicaragua, we have offered support to those forces resisting tyranny.

Regrettably, we have failed to offer the same support to Jonas Savimbi and his anti-Communist forces, support which is needed now more than ever.

Mr. President, 10 years ago, the Portuguese withdrew from Angola. Shortly thereafter, the Marxist Popular Movement for the Liberation of Angola [MPLA] seized power, and was promptly rewarded with a massive infusion of Soviet and Cuban assistance. A mere 1 month after declaring a Marxist state, the MPLA received an estimated $50 million in Soviet aid, together with several thousand Cuban combat troops and hundreds of Soviet advisers.

Over the years, the presence of Soviet and Cuban personnel in Angola has multiplied. Today, an estimated 5,000 to 10,000 advisers from the Soviet Union, East Germany, and Cuba are present in Angola. So too are an estimated 30,000 Cuban combat personnel.

Over these years too, the Angolan people's hopes for democracy and freedom have been crushed. The MPLA's constitution provides for popular participation in the Government. But it is the only legal political party in Angola. The party's opponents have been outlawed, and as a consequence, Angolan citizens have no opportunity to change their Government.

Moreover, the MPLA has proscribed virtually every basic right. The State Department's country reports on human rights practices paints a dismal portrait of Angolan life:

In Angola today, there is no semblance of due process, with respect to either arrests or trials.

There is no freedom to travel within Angola, and very little opportunity to leave.

There is no freedom of speech.

There is no freedom of the press.

There is no freedom of assembly.

Moreover, Cuban forces appear increasingly bent on reigning in the activities of the Christian church in Angola. At present, the majority of Angolans are Christians, and perhaps for this reason, the MPLA has not moved to shut down all churches. But the Government continues to emphasize the importance of atheism and remains critical of religion. Several weeks ago, I sponsored a showing of two films which detailed the bombing of churches by Cuban military personnel.

Simply put, we are witnessing a massive effort by the Soviet Union, Cuba, and the Marxist MPLA to extinguish the last vestiges of freedom in Angola. And this, we must not allow. Throughout our history, Americans have believed that freedom is the birthright of all people, that victories against poverty are greatest and peace most secure when people are free.

Recently, this Congress opened the door to aiding the UNITA forces by repealing the ill-advised Clark amendment, which for a decade had banned U.S. assistance to the Angolan rebels. We must now walk through that opened door. It is time again for the United States to fulfill its historic promise to combat tyranny and foster freedom around the world.

The legislation will reward those forces in Angola who believe in freedom and who are committed to democracy. I urge my colleagues to join us in the effort to aid the UNITA rebels by cosponsoring this important bill, and ask that the text of it be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2021

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there are authorized to be appropriated to such

department or agency of the United States as the President shall designate, except the Central Intelligence Agency or the Department of Defense, $27,000,000 for humanitarian assistance to the National Union for the Total Independence of Angola (UNITA).

SEC. 2. As used in this Act, the term "humanitarian assistance" means the provision of food, clothing, medicine, and other humanitarian assistance, and it does not include the provision of weapons, weapons systems, ammunition, or other equipment, vehicles, or material which can be used to inflict serious bodily harm or death.

By Mr. METZENBAUM:

S. 2022. A bill to amend the Clayton Act regarding antitrust enforcement; to the Committee on the Judiciary.

ANTITRUST IMPROVEMENT ACT

Mr. METZENBAUM. Mr. President, today I am introducing legislation to reform and improve our antitrust laws. This legislation has three fundamental objectives: First, to strengthen antitrust remedies; second, to provide for careful consideration of cost reductions and foreign competition in antitrust analysis; and third, to improve antitrust enforcement.

Three times in our Nation's history Congress has enacted major legislation to prevent conduct that hurt competition. In 1890, Congress enacted the law that remains today the most comprehensive and fundamental statement of our antitrust principles, the Sherman Act. In 1914, Congress strengthened the antitrust laws by enacting the Clayton Act and the Federal Trade Commission Act. In 1950, Congress was again concerned that mergers were reducing competition and injuring the economy. It responded by strengthening the law once again in enacting the Cellar-Kefauver Act.

These laws have served this country well. When they have been enforced, they have prevented mergers that would harm competition, discouraged price fixing, and deterred large companies from attempting to drive small rivals out of existence through unfair means.

Over the last 5 years, our Nation has witnesses a misguided retreat from fundamental antitrust principles. This administration has consistently cut back on enforcement and attempted to reinterpret the law whenever possible to reduce its effectiveness. The result has been the most permissive antitrust climate in this century.

The administration is not content with only lax enforcement. It wants to change the antitrust laws permanently to make sure that no future administration can adopt a different set of policies. It has proposed legislation to undercut both private and public enforcement of the antitrust laws. I will strongly oppose this effort and I urge my colleagues in the Congress to join me.

The legislation I am introducing today also is intended to reform the antitrust laws, but not in the way the administration is proposing. This legislation will help restore the antitrust laws to a vigorous and important role in the Nation's economic policy.

THE LEVEL OF MERGER ACTIVITY

Before I explain my proposal, let me review the record of the last 6 years in merger activity.

In 1983 the total number of mergers was 2,533, up 8 percent from 1982. This was the highest annual count since 1974. The total dollar value paid for all transactions in 1983 was $73.1 billion, up 36 percent from $53.8 billion in 1982. The 1983 total was just short of the all-time record of $82.6 billion in 1981. Deals of $100 million or larger have risen steadily from 94 in 1980, 113 in 1981, 116 in 1982, 137 in 1983 to 200 in 1984.

The extraordinarily high level of merger activity continued in 1984. There were 2,543 acquisitions in 1984, even higher than the 1983 level. In addition, the number of acquisitions of over $100 million in value was up 47 percent from the 1983 level. During the first half of 1985, there were 1,563 acquisitions. This rate over all of 1985 would have resulted in 3,126 mergers, an increase of 583 over 1984, and the largest since 1974.

In addition to the large number of total mergers, the number of massive combinations has far exceeded any period in our Nation's history. Incredibly, the largest 16 mergers in the history of the country have occurred during the permissive climate that has existed since this administration took office. The table below shows the top 16 mergers.

Year and acquisition	*Value (In billions of dollars)*
1984: Gulf-Socal	13.2
1984: Texaco, Inc.-Getty	10.1
1981: Dupont-Conoco	8.0
1981: United States Steel-Marathon	6.6
1984: Mobil Corp.-Superior Oil	5.7
1985: General Foods Corp.-Philip Morris	5.6
1984: Royal Dutch Shell-Domestic Shell	5.2
1983: Southern Pacific-Santa Fe	5.1
1985: Hughes Aircraft-General Motors	5.0
1985: Reynolds-Nabisco	5.0
1985: Allied Corp.-Signal	4.5
1981: Societe Nationale Elf Aquitaine-Texas Gulf	4.3
1981: Connecticut General Corp.-INA Corp.	4.2
1982: Occidental-Cities Service Corp.	4.1
1985: United States Steel-Texas Oil and Gas	4.1
1985: Baxter Travenol-American Hospital Supply	3.7

Note.—This list does not include the pending proposed mergers of Beatrice-Kohlberg, Kravis, Roberts ($6.2 billion) and GE-RCA ($6.3 billion).

There is little doubt that this merger wave can be traced directly to the signals coming from this administration. Business Week in February 1984 reported:

The trend to concentration, which started as a series of survival moves in the last recession, has developed a powerful momentum.

It also noted that companies are more likely to decide that a merger is the most attractive alternative after—a hint from their advisers that the time to combine is during this "window of opportunity" opened by the Reagan administration's antitrust policy.

Congress cannot change the officials in charge of antitrust enforcement at the Federal Trade Commission and the Justice Department. However, we can improve and strengthen the existing antitrust laws.

IMPROVING REMEDIES

The bill I am introducing today makes a number of substantial improvements to remedies available in antitrust cases. First, it allows the Federal antitrust agencies to bring an action on behalf of consumers to recover damages on their behalf. The recovery would be distributed to consumers in any reasonable way possible.

Under current law, the Justice Department cannot sue on behalf of injured consumers. While the courts have not clearly stated the authority of the FTC, it has never brought a case directly seeking consumer redress for antitrust violations and its authority is at least very doubtful. This provision recognizes that there are many cases when private litigation is not a feasible way for consumers to be compensated. In 1976, Congress gave authority to State attorneys general to sue on behalf of injured consumers. This authority has produced substantial benefits by allowing State authorities to pursue actions where consumers would not otherwise have been compensated. Giving this same authority to the Federal enforcement agencies is necessary in cases which affect consumers of many States and are not practical for a single State attorney general to bring.

The bill also authorizes the Federal enforcement agencies and the State attorneys general to sue for damages by indirect purchasers, consumers who do not buy directly from parties to the antitrust violation. The Supreme Court held in the Illinois Brick decision that indirect purchasers could not pursue a claim under the antitrust laws. If all the major automobile manufacturers engaged in price-fixing, only dealers could bring a case. This unfair principle must be changed.

It is true that authorizing suits by indirect purchasers introduces some complexity in sorting out damages between direct and indirect purchasers. The bill deals with this problem by providing that parties with both types of claims should normally present their claims in the same proceeding. This approach allows the Court to conduct the case in the most efficient

way possible and to insure that the defendant is not forced to pay twice for the same injury.

Another improvement in antitrust remedies is to require that divestitures which are undertaken to resolve an anticompetitive merger must fully restore competition lost as a result of the merger. The antitrust agencies have recently approved merger settlements in which the divestitures were not adequate to cure the competitive problem. In fact, the Justice Department and the FTC appear to accept the principle that partial divestitures do not have to fully restore competition. In addition, the bill provides that divestitures to acceptable purchasers should be arranged before the merger is approved and that the interests of employees should be considered in approving partial divestitures as a settlement of an unlawful merger.

The bill also strengthens remedies by allowing successful plaintiffs to obtain interest from the time of the violation, allowing the United States to receive treble damages for suits in its own behalf, and clarifying that divestiture is available to private parties in a merger case.

COST REDUCTIONS AND FOREIGN COMPETITION

The antitrust laws have not been the cause of our crisis in foreign trade. The trade deficit has grown steadily worse as the anitrust climate has become more permissive. The administration would like to point to antitrust as a way of diverting attention from its disastrous trade policies.

Our problem in international competition is not that American companies are too small. American firms are already the largest in the world in automobiles, steel, electronics, and textiles, as well as other industries. The Japanese have 9 automobile manufacturers, 44 textile manufacturers, over 30 companies making steel products, and over 90 manufacturers of electrical products in a domestic market less than half the size of the United States. Yet the Japanese are the symbol of our strongest international competition.

It would be a disastrous mistake for the Congress to create a broad antitrust exemption for industries hurt by foreign competition. The result would be to increase permanently concentration in many of our basic industries. In the long run, we would be less efficient, not more. We would do more poorly in foreign markets, not better. A recent study by economists at the Federal Trade Commission concluded:

> A general policy of liberalizing the antitrust laws for declining industries would * * * permit mergers with potential anticompetitive effects even though no justification could be offered based on efficiencies and foreign competition. It might be suggested that such mergers would nevertheless be justified to save jobs in areas hard hit by declining employment and/or to improve the balance of trade. However, * * * there is no persuasive reason to believe that the mergers that would be allowed under the liberalization in question would increase employment or improve the trade balance. (Frankena and Pautler, "Antitrust Policy for Declining Industries," FTC, October 1985).

The truth is that the massive wave of mergers we have experienced over the last few years has been a failure for American industry. Business Week recently reported that one out of three mergers is undone. A recent management consulting study of major acquisitions showed 62 percent of them failed to meet basic tests of success. A study by 14 economists of mergers between 1962 and 1972 showed mergers in the United States did not increase profits and tended to slow down the growth rate of the firm.

Such merger disasters as the Penn Central Railroad combination, the Pan Am acquisition of National, Mobil's acquisition of Montgomery Ward, Exxon-Reliance Electric, Standard Oil of Ohio-Kennecott, and Flour Corp.-St. Joe Minerals, are a few on the long list of failures. Yet each of them was justified as promising efficiencies and higher profits for the acquiring company.

The antitrust laws should not permit large mergers which threaten competition on the bare hope and speculative arguments by the companies that they will promote international competitiveness. On the other hand, we need to ensure that the antitrust laws do accommodate the reality of foreign competition and the possibility that a merger will reduce costs. In some cases, a merger will enable a firm to streamline its operations and to reduce production costs. In other cases, foreign imports will offset any harm from competition from the merger of American companies. The bill I am introducing today insures that these factors will be taken into account in assessing whether mergers will harm competition.

We must be particularly careful in how these factors are taken into account, however. Otherwise, they will serve as a loophole to justify mergers that should not be permitted. Companies who want to merge now routinely claim vast efficiencies in trying to justify their merger to the Federal Trade Commission and the Justice Department. Some have even claimed that tax savings or other financial manipulations should count in favor of the merger. The antitrust agencies should consider efficiency claims in the exercise of prosecutorial discretion but only if the merging companies prove by clear and convincing evidence that their merger will substantially lower costs and that prices will be reduced, too.

Similarly, foreign competition should be considered in assessing a proposed merger but only if we can be reasonably sure that foreign imports will actually offset the possible harm to competition from an unlawful merger. The bill I am introducing today sets out a careful standard for taking these factors into account.

The general standards in the antitrust laws now are flexible enough to accommodate consideration of these factors. However, there are substantial benefits in incorporating careful standards into the law. Doing so will eliminate any misunderstanding that these factors can be considered as well as insure that these factors are not used so loosely that they become a justification for mergers that will really harm competition.

IMPROVING ENFORCEMENT

The third major objective of the bill is to improve enforcement. First, in order to improve antitrust review of large mergers by the Department of Justice and the Federal Trade Commission, the bill provides for a longer waiting period under the Hart-Scott-Rodino Act for mergers over $1 billion in value. Second, the bill allows State attorneys general to have access to information filed under the Hart-Scott-Rodino Act to facilitate their own enforcement actions. Both these provisions will encourage more careful review of proposed mergers.

SECTION-BY-SECTION ANALYSIS

Mr. President, I ask unanimous consent that a more detailed explanation of the bill and its text be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2022

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Antitrust Improvement Act of 1986".

REDRESS FOR CONSUMERS

SEC. 2. (a) Section 4C(a) of the Clayton Act is amended—

(1) in paragraph (1), by striking out "Any" and inserting in lieu thereof "The Attorney General, the Federal Trade Commission, or any";

(2) in paragraph (1), by striking out "such State," each place it appears and inserting in lieu thereof "the United States or such State, as appropriate,";

(3) in paragraph (1), by inserting before the period at the end of the first sentence ", including injury resulting from indirect purchases";

(4) in paragraph (2), by inserting "United States, or the" before "State";

(5) in paragraph (2), by striking out "including" and inserting in lieu thereof "and in the case of a State,"; and

(6) in paragraph (2), by adding at the end thereof the following: "The court, in its discretion, may order the distribution of the award in a manner that is just and equitable to those persons or the class of persons on whose behalf the action was brought.".

(b) Section 4C(b) of the Clayton Act is amended—

(1) in paragraph (1) by inserting "Attorney General, the Federal Trade Commission, or the " before "State";

(2) in paragraph (1) by inserting ", as appropriate," after "general"; and

(3) in paragraph (2) by striking out "State claim" and inserting in lieu thereof "claim of the United States or the State".

(c) Section 4C(d) of the Clayton Act is amended by inserting "Attorney General, the Federal Trade Commission, or the" before "State".

(d) Section 4C of the Clayton Act is amended by adding at the end thereof the following:

"(e)(1) If the Attorney General, the Federal Trade Commission, or a State attorney general asserts a claim for damages based on indirect purchases pursuant to subsection (a)(1), the defendant shall be entitled to allege, as a partial or complete defense to a claim by a direct purchaser based on the same or substantially the same alleged conduct, that some or all of what would otherwise constitute direct purchaser's damages were passed on by the direct purchaser to persons on whose behalf the claim for damages from indirect purchases was brought.

"(2)(A) Any person entitled to maintain an action pursuant to subsection (a)(1), alleging injury from indirect purchases, may intervene in any action under section 4 alleging injury from direct purchases based on the same or substantially the same alleged conduct, if a request for such intervention is made within six months after the date of the filing of the initial action. The failure to request intervention in a pending action by any person alleging injury from indirect purchases, within such time, shall constitute a bar to a claim by such person for injury from indirect purchases based on the same or substantially the same alleged conduct.

"(B) Any person initiating an action under section 4 may intervene in any action under subsection (a)(1) which alleges injury from indirect purchases based on the same or substantially the same alleged conduct.

"(C) Upon a request made by the defendant, the court shall order the consolidation of any pending actions pursuant to subsection (a)(1) alleging injury from indirect purchases and any other action under section 4 based on the same or substantially the same alleged contract, combination, or conspiracy.

"(3) Upon the initiation of any action pursuant to subsection (a)(1) alleging injury from indirect purchases, the Attorney General, the Federal Trade Commission, or State attorney general, as the case may be, shall provide reasonable public notice of the allegations of the suit and, to the extent possible, a general description of any direct purchasers who may be entitled to maintain an action under section 4.".

DAMAGES FOR INJURY TO THE UNITED STATES

SEC. 3. Section 4A of the Clayton Act is amended by striking out "actual" and inserting in lieu thereof "threefold the".

DIVESTITURES

SEC. 4. The Clayton Act is amended by adding between section 7A and section 8 the following:

"CONSENT AGREEMENTS AND DECREES AND ORDERS IN ACQUISITIONS

"7B. (a) With respect to any acquisition—

"(1) no Commission consent agreement,

"(2) no consent decree proposed to a court of competent jurisdiction by the Commission or the Attorney General, and

"(3) no order issued by either the Commission or a court

which provides for the divestiture of any part of the assets of a party to such acquisition shall become final before the required divestiture has been approved by the Commission or the court. If the divestiture required by a consent agreement, consent decree, or order is not approved, such agreement, decree, or order may be rescinded by the Commission or court and the Commission or the Attorney General may petition the court for further relief or, if appropriate, initiate an action or proceeding to consider the legality of the acquisition and the need for further relief.

"(b) The provisions of consent decrees proposed by the Attorney General or the Commission and consent agreements proposed by the Commission shall be enforceable, consistent with the terms of the agreement or proposed decree, after agreement by the persons subject to the provisions of the consent decree or agreement, in accordance with procedures authorized by law for enforcement of final orders and decrees.

"(c) No divestiture shall be deemed an acceptable remedy for an acquisition which substantially lessens competition unless the divestiture fully restores competition lost as a result of the acquisition and there is a substantial likelihood that any buyer of divested assets shall be a viable competitor for the foreseeable future. In approving divestitures, the Attorney General, the Federal Trade Commission, or the court, as appropriate, shall insure that reasonable steps are taken to protect the interests of affected employees and to preserve employment consistent with the full restoration of competition.".

COST REDUCTION AND IMPROVING COMPETITION

SEC. 5. (a) The Federal Trade Commission and the Attorney General shall, pursuant to section 7A(d) of the Clayton Act, promulgate rules within 180 days after the date of enactment of this Act, specifying information to be provided by persons, subject to subsection (a) of section 7A of such Act, who claim that an acquisition of securities or assets or a joint venture will reduce the costs of operation and thereby promote competition. Such information shall be limited to specific reductions in the costs of production, distribution, transportation, or, in exceptional cases, other factors directly related to firm operations. The Federal Trade Commission and the Attorney General shall take into account such information in determining whether to initiate an action under any of the antitrust laws or the Federal Trade Commission Act.

(b) In any case in which the Federal Trade Commission or the Attorney General declines to initiate an action regarding an acquisition or joint venture on the grounds that the acquisition or joint venture is likely to promote competition through reducing costs, the agency primarily responsible for the antitrust review shall certify that the parties have demonstrated by clear and convincing evidence that—

(1) costs of operation are likely to be substantially reduced directly as a result of the proposed acquisition or joint venture,

(2) the cost reduction is likely to lead to reduced prices, and promote competition, and

(3) there is no reasonable alternative method for achieving such cost reductions other than the proposed acquisition or joint venture.

(c) In the event such a certification is made, it may be offered by any party to any action under the antitrust laws or the Federal Trade Commission Act alleging that the acquisition or joint venture violates such laws and shall be relevant in determining whether the acquisition or joint venture may substantially lessen competition.

FOREIGN COMPETITION

SEC. 6. The Clayton Act is amended by adding between section 7B, as added by this Act, and section 8, the following:

"FOREIGN COMPETITION

"Foreign competition shall be considered in determining whether an acquisition or joint venture may substantially lessen competition to the extent that—

"(1) there is a substantial likelihood that foreign sales in the United States will increase significantly in response to a reduction in competition resulting from the acquisition or joint venture, and

"(2) such increase will substantially offset any harm from such reduction.".

TIME FOR REVIEW OF MERGERS

SEC. 7. (a) Section 7A(b)(1)(B) of the Clayton Act is amended by striking out "(or in the case of a cash tender offer, the fifteenth day)".

(b) Section 7A(e) of the Clayton Act is amended—

(1) by striking out "(or in the case of a cash tender offer, the 15-day waiting period)" each place it appears,

(2) in paragraph (2) by striking out "(or in the case of a cash tender offer, 10 days)", and

(3) by adding at the end thereof the following new paragraph:

"(3) If, as a result of an acquisition to which subsection (a) applies the acquiring person would hold an aggregate total amount of the voting securities or assets of the acquired person in excess of $1,000,000,000 in value, the additional waiting period provided in paragraph (2) of this subsection shall be 60 days.".

INFORMATION TO STATE ATTORNEYS GENERAL

SEC. 8. Section 7A(h) of the Clayton Act is amended by inserting before the period at the end thereof the following: ", or to officers and employees of appropriate Federal law enforcement agencies or to any officer or employee of any State law enforcement agency upon the prior certification of an officer of any such Federal or State law enforcement agency that such information or documentary material will be maintained in confidence. The maintenance of confidence requirement does not preclude any use of such information or documentary material for official law enforcement purposes, including the preparation of comments regarding consent agreements or decrees proposed by the Commission or the Attorney General under any of the antitrust laws or the Federal Trade Commission Act".

PRIVATE REMEDIES

SEC. 9. Section 16 of the Clayton Act is amended by adding at the end thereof the following: "Injunctive relief under this section may include equitable remedies of dissolution, rescission, partial divestiture, and related equitable remedies.".

INTEREST ON DAMAGE AWARDS

SEC. 10. (a) Section 4(a) of the Clayton Act is amended by—

(1) inserting after "sustained,", in the first sentence, the following: "simple interest on the actual damages for the period beginning on the date of service of such person's pleading setting forth a claim under the antitrust laws or the Federal Trade Com-

mission Act and ending on the date of judgment, such interest to be adjusted by the court if it finds that the award of all or part of such interest is unjust under the circumstances,"; and

(2) striking out, beginning with "The court may" in the second sentence, all that follows through the end of such subsection.

(b) Section 4A of the Clayton Act is amended by—

(1) inserting after "sustained," in the first sentence, the following: ", simple interest on actual damages for the period beginning on the date of service of the pleading of the United States setting forth a claim under the antitrust laws and ending on the date of judgment, such interest to be adjusted by the court if it finds that the award of all or part of such interest is unjust under the circumstances,"; and

(2) striking out, beginning with "The court may" in the second sentence, all that follows through the end of such section.

(c) Section 4C(a)(2) of the Clayton Act is amended by—

(1) inserting after "this subsection," the following: "simple interest on the total damage for the period beginning on the date of service of the pleading of the United States or the State setting forth a claim under the antitrust laws and ending on the date of judgment, such interest to be adjusted by the court if it finds that the award of all or part of such interest is unjust under the circumstances,"; and

(2) striking out, beginning with "The court may" in the second sentence, and all that follows through the end of such subsection.

ANTITRUST IMPROVEMENT ACT OF 1986

BASIC APPROACH

The Antitrust Improvement Act of 1986 makes changes in the antitrust laws in three areas—(1) improving remedies for antitrust violations; (2) providing guidelines for the consideration of foreign competition and possible efficiencies from mergers; and (3) strengthening enforcement. In each area, the objective of the bill is to promote more vigorous enforcement of the antitrust laws against conduct that harms competition while avoiding any interference with efficient and productive activities by American companies.

I. IMPROVING REMEDIES

1. Redress for consumers.—Under current law, the Justice Department cannot bring an action to recover damages to consumers injured by antitrust violations. While the courts have not clearly stated the authority of the Federal Trade Commission to bring such a suit, its authorization to do so is doubtful. The bill allows both agencies to sue for treble damages to consumers.

This is an extension of the current law which allows State attorneys general to sue on behalf of consumers in the State. It is important to allow Federal antitrust agencies this same authority to deal with very large cases that affect people in many States.

The bill also allows suits on behalf of consumers injured through "indirect" purchasers. Under the Supereme Court's Illinois Brick decision, someone who pays higher prices because of price-fixing cannot sue unless he or she buys directly from the parties to the conspiracy. For example, consumers could not sue for pricefixing by all the major automobile manufacturers. This provision eliminates that prohibition for suits by the FTC, the Justice Department, and the State attorneys general.

In order to avoid duplicate recovery, the bill requires that any claim for indirect purchases be made either by intervening in a pending suit by a direct purchaser, or by filing a suit in which direct purchasers are allowed to intervene. If the parens patriae suit is filed on behalf of indirect purchasers, the Government must give reasonable public notice to persons who potentially can file damages for injury from direct purchases. If the direct purchaser initiates a suit, the Government must file a request to intervene within 6 months in order to pursue a claim for direct purchases.

In any case where the government has filed a claim for indirect purchases, the defendant may raise a defense in a direct purchaser suit that the direct purchaser has "passed on" his damages.

2. Effectiveness of divestitures.—The Federal antitrust agencies have increasingly relied on partial divestitures to cure the harmful effects on anticompetitive mergers. While the justice Department says it is preferable for required divestitures to take place before the merger occurs, in practice the FTC and Justice have resolved merger cases by allowing divestitures months or even years after the merger takes place. For example, in the Texaco-Getty merger, the FTC approved the merger before acceptable divestitures of a refinery and retail stations were approved. In both cases, there were serious questions about whether a satisfactory divestiture could be arranged. The bill provides that no merger order involving divestitures is final until satisfactory divestitures have been arranged and approved by the Commission or the court.

In addition, the bill requires that divestitures fully restore lost competition by finding a viable buyer who will be as significant a competitor as the merged firm. For example, in the proposed Norfolk-Southern-Conrail merger, the Justice Department has approved a divestiture plan in which less than half of the competitive problem has been resolved. In the case of the LTV-Republic merger, the Department approved the sale of a plant in Masillon, OH, which closed within 2 years of the merger.

Finally, the bill requires that the antitrust agencies consider employees' interests in approving partial divestitures, consistent with the preservation of competition.

3. Treble damages for the United States.—Under current law, the United States can recover only actual damages in suits for injury to the Government itself. This provision allows the United States to recover treble damages as a plaintiff in its own behalf.

4. Divestiture remedy in private cases.—Section 16 of the Clayton Act provides that private plaintiffs may sue for "injunctive relief" for violations of the antitrust laws. A number of courts have properly concluded that section 16 authorizes the courts to order divestitures in appropriate cases brought by private parties.

In a questionable opinion in 1976, the ninth circuit distinguished between "injunctive relief" and the equitable remedy of dissolution to conclude that the remedy of divestiture is not available to private plaintiffs in an action challenging a merger. However, because of the importance of this remedy, and in order to avoid any further certainty and litigation, the bill makes clear that this remedy is available.

5. Interest awards to injured parties.—Under current law plaintiffs in antitrust cases can obtain interest on damage awards from the time of the judgment. However, the violation and the damage caused by it occur long before the case is won. This provision recognizes that the plaintiff should receive interest dating from the time of the loss. This provision will more fairly compensate injured parties and encourage the speedy resolution of cases by ending the incentive for delay.

II. COST REDUCTIONS AND FOREIGN COMPETITION

The problem American firms face in foreign competition is not their small size. American companies are the largest in the world in automobiles, steel, electronics and textiles and among the largest in shoes. Japan, with a domestic market less than half the United States has 9 companies that manufacture automobiles and over 30 companies that make steel.

Allowing firms to merge in order to meet foreign competition only makes sense if the merger will reduce costs and allow the firm to lower its prices. Otherwise, the merged companies will be even less competitive. A recent study by Federal Trade Commission economists concluded that: "A policy liberalizing the antitrust laws specifically for declining industries would be ill-advised. Such a move would open the way for anticompetitive mergers for which there is no efficiency justification. Some have argued that such a liberalization might be justified to save jobs in areas hard hit by declining employment/ and or to improve the balance of trade. However, there is no persuasive reason to believe that the mergers that would be allowed under the liberalization in question would increase employment or improve the trade balance. Indeed, anticompetitive mergers that do not improve efficiency could reduce U.S. employment and U.S. firms' ability to compete with foreign firms as domestic prices rise and output falls. As a result, changes in merger policy that allow anticompetitive mergers are not a solution to the problem of industrial decline." (Frankena and Pautler, "Antitrust Policy for Declining Industries," FTC, October 1985.)

Because the real question is whether a merger will allow a firm to reduce costs and prices, the bill provides for consideration of possible cost reductions from proposed mergers.

The bill provides that the Federal Trade Commission shall develop rules for companies to furnish specified information regarding any claims that the proposed merger will reduce costs. The information is limited to cost reductions involving production, distribution and transportation, and in exceptional cases, other factors. In all cases, the information to be considered must relate directly to the operations of the firm and cannot extend to reductions which are not real savings in resources such as tax savings. Claims of more efficient management, savings in overhead and administrative expenses, better relations with employees and the like would almost always be too speculative to be considered.

The bill requires that the FTC and the Justice Department take into account reliable evidence that mergers will substantially reduce costs in these specified areas. If the antitrust agencies decline to bring a case based on these considerations, they must certify that the parties have shown by clear and convincing evidence that (1) the merger will substantially reduce costs in one or more of these areas (2) the cost reductions are likely to outweigh any decrease in com-

petition and result in lower prices and (3) there are no reasonable alternatives for achieving these cost reductions. This certification is relevant in a suit by another person challenging the merger.

Foreign competition should be considered in some cases in evaluating the impact of a merger in the United States but only if foreign imports can really make a difference in preventing harm to competition.

The bill requires that the courts consider the impact of foreign competition to the extent it can be shown there is a substantial likelihood that increased foreign sales in the United States will significantly offset any reduction in competition. In some cases, companies have argued that all production in the world should be considered even if only a small portion is exported to the United States. In other cases, companies have argued that increased foreign competition will offset any increase in competition even though additional imports are blocked by quotas or other trade barriers or it is unrealistic to expect that significant additional imports will result from a price increase in the United States. The intent of this provision is to preclude speculation as to increased foreign imports and to require that there be a substantial likelihood that they will substantially offset any harm to competition before they can be considered.

III. STRENGTHENING ENFORCEMENT

1. Time for review of mergers.—The bill provides for a longer period of review under the Hart-Scott-Rodino Act for mergers over $1 billion in value. Currently, the antitrust agencies can be forced to review a large, complex merger transaction in as little as 25 days. The bill provides at least 90 days for review of large proposed mergers and allows an equal review period for cash tender offers and other acquisitions. As is the case under current law, the antitrust agencies can shorten this waiting period in individual cases.

2. Access to information for State attorneys general.—The bill allows State attorneys general to have access to information filed by proposed merging companies pursuant to the Hart-Scott-Rodino Act. Prior to 1984, the policy of the Federal Trade Commission had been to release this information to State AG's for use in connection with law enforcement proceedings. However, in 1984 the FTC by a 3 to 2 decision interpreted its statute to mean that it did not have this authority. Several States sued the FTC to reverse this ruling. The FTC decision was upheld by the courts in large part because of deference to the FTC in interpreting its own statute. Consequently, several State AG's who wished to review information regarding a number of proposed mergers were denied access to it.

The bill would ensure that State AG's could have access to this information upon a certification that it would be kept confidential, subject to the need to use it for law enforcement actions and to file comments regarding the adequacy of consent agreements and consent decrees proposed by the Commission or the Attorney General. This provision would aid State attorneys general in bringing their own enforcement actions as well as enable them to participate meaningfully in commenting on FTC and Justice Department merger cases.

By Mr. LEVIN (for himself, Mr. DURENBERGER, and Mr. RUDMAN):

S. 2023. A bill to provide for the establishment of a file concerning the review or rules by the President, and for other purposes; to the Committee on Governmental Affairs.

RULE MAKING INFORMATION ACT

● Mr. LEVIN. Mr. President, today I am introducing, along with Senator DURENBERGER and Senator RUDMAN a bill to bring accountability into the regulatory review process conducted by OMB and established by President Reagan in two Executive Orders 12291 and 12498.

The concept for public disclosure contained in this bill is not new. It was addressed in S. 1080, the omnibus regulatory reform bill passed unanimously by the 97th Congress on March 24, 1982; it was addressed in the reauthorization of the Paperwork Reduction Act passed unanimously by the Senate Governmental Affairs Committee in the 98th Congress on July 26, 1984; and it has been publicly endorsed in part by OMB officials involved in the regulatory review process over the past several years. It has not, however, been put into effect, and that is why we are here today introducing a bill containing basic "sunshine in government" provisions for the OMB review process, which should have been implemented over 5 years ago. We are having to mandate by legislation, what OMB and the President should have had the good sense to do administratively many years ago. But that fact does not make this bill any less important. In fact, it is vitally significant to well established and congressionally intended principles of public participation in the rulemaking process.

Let me take a minute before I elaborate on the problems concerning the lack of public participation in OMB's review of rules, to provide a brief background on just what review process this bill addresses, for those who may be unfamiliar with it.

On February 17, 1981, President Reagan issued Executive Order 12291, which required all covered agencies—that included all executive branch agencies, but not the independent regulatory agencies—to submit their proposed and final rules to OMB for review prior to publication. It directed OMB to review the rules for compliance with five principles layed out in the Executive order. For the record, these five principles are:

(a) Administrative decisions shall be on adequate information concerning the need for and consequences of proposed government action;

(b) Regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society;

(c) Regulatory objectives shall be chosen to maximize the net benefits to society;

(d) Among alternative approaches to any given regulatory objective, the alternative involving the least net cost to society shall be chosen; and

(e) Agencies shall set regulatory priorities with the aim of maximizing the aggregate net benefits to society, taking into account the condition of the particular industries affected by regulations, the condition of the national economy, and other regulatory actions contemplated for the future.

The order set a timetable for OMB review of 10 days for proposed and final nonmajor rules, 60 days for proposed major rules, and 30 days for final major rules. Implicit in the order, however, is the understanding that these timeframes are not inviolate and can be extended indefinitely by OMB. In short, OMB can delay the publication or implementation of a rule indefinitely under Executive Order 12291, if it sees fit, but arguably only if one of the standards in the order is not met. That's strong medicine and an unprecedented role for the management side of OMB.

Now, I should add, here, that my description of the operation of Executive Order 12291, would not coincide with that of OMB. It maintains to my utter amazement, in documents filed in court cases challenging the authority of OMB to hold up rules, that its role is limited to that of an adviser, that the agency head retains the legal authority to draft and issue rules, and that OMB only offers advice. The consequences, it says, to an agency's failure to follow OMB's advice is not legal in nature, but political—that is the possible loss of a job by the responsible agency personnel. So, OMB maintains, it is not the ogre in the rulemaking process; it is merely the consultant.

Well, this consultant has developed a remarkable track record for getting its ideas accepted. Following this fiction created by OMB, on OMB's "advice," agencies, such as the EPA and OSHA have delayed numerous rules beyond the time periods specified in the order and many indefinitely. Senator DURENBERGER, chairman of the Intergovernmental Relations Subcommittee of the Governmental Affairs Committee, will be chairing a hearing on next month at which testimony will be presented citing several examples of the strength of OMB's ability to "consult" with these rulemaking agencies. The House Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce held a lengthy hearing and conducted an extensive investigation into the example of OMB's involvement in EPA's asbestos regulations. Numerous court cases have been filed, the discovery portion of which has disclosed OMB's heavy hand.

Many highly experienced persons in the field of regulation have called for the elimination of the OMB review process. They argue that the OMB has no legitimate role in reviewing many of the highly complex, unique and exhaustively developed rules agencies are required to send OMB for review. They point out that OMB simply does

not have the technical expertise to intelligently comment on, much the less attempt to dictate the outcome of, the thousands of rules which are now required to be reviewed. I have not yet reached that conclusion. I am not uncomfortable with a President having a direct role in the rulemaking process, because I value the political accountability that brings to the rulemaking process. I think the public should be able to go to its President and seek relief from, or the benefits of, agency regulation and know that he or she is in charge. Because it is the President, here in the form of OMB, who is truly responsible for the rules that are being reviewed under the Executive order. President Reagan, in signing that order, has decided to take the heat, and well he should, for the outcome of his agencies' rules.

But, and this is the big but, OMB and the President cannot have it both ways—or at least we should not let them have it both ways. They cannot, on the one hand, seek and obtain the power to shape the rules being issued and on the other hand, obfuscate the extent of their role and the basis for the changes they demanded. When I read the documents filed by OMB and the Justice Department in the lawsuit involving the EPA regulations for the underground storage of hazardous waste, I am shocked. Here OMB and the Justice Department are openly talking out of two sides of their mouths and are not shy about it. To the agencies, they say, "You follow the Executive order and the "comments" of OMB or your job is at risk." To the court they say, "Any agency head is free and has the lawful responsibility to issue the agency rule in whatever form the agency head deems advisable. OMB's comments are not legally binding. The responsibility lies with the agency head." That's cute. It's much like the older brother who intimidates his younger brother into throwing the rock through the garage window and then when the moment of reckoning comes, he is silent in his support of his brother and refuses to acknowledge any part he played in the matter. When his little brother explains to their parents his older brother's threats, the older brother says, "Yeah, but, it was his decision." That type of conduct is shameful, but it is exactly what OMB is doing. It acts with the iron hand, and then lets the agencies turn slowly in the wind to meet the repercussions and defend the OMB-imposed actions.

Well, this bill will eliminate that inequity and that problem. Because by requiring the extent of OMB's involvement to be in the public record, OMB itself will be responsible for its own actions and will not be able to hide behind the agency and escape public scrutiny. Moreover, the Congress and the public will know exactly the extent to which OMB affected the outcome of the rule and the basis upon which OMB argued for its position. No longer will it be a guessing game. Finally, but no less importantly, the public will know whom it should be lobbying on specific issues, because it will know from which agency the criticisms of the rule are coming.

Those who have followed this issue for the last 5 years will note that we have added one part to this bill which was not included in previous discussions of the disclosure provisions. And that is a limitation on the amount of time OMB can have to review a rule. There is ample evidence that OMB—on rules of some importance—is exceeding the timeframe established by the Executive order. And once exceeded, the time for review can become almost unlimited. Senator DURENBERGER and I have agreed that OMB's opportunity for review should be limited as well as a public one, and in establishing a strict timeframe, we are reestablishing the authority of the agency head to make a timely decision. The Senate unanimously passed this provision, too, when it passed S. 1080 in the 97th Congress, since S. 1080 contained a comparable provision.

This bill also addresses the disclosure issues that have arisen pursuant to Executive Order 12498. That Executive order was issued by President Reagan on January 4, 1985. It regularized what those in the rulemaking field had come to understand—that OMB's role in an agency rulemaking is not limited to the review period specified in Executive Order 12291, the proposed and final rule. OMB's role begins—or at least OMB tries to initiate its role—when the agency first contemplates the development of a rule. Executive Order 12498 requires rulemaking agencies—but for the independent regulatory commissions—to develop regulatory agendas; that is, a yearly plan of rules to be developed or worked on, and to submit a draft of that plan to OMB for review. OMB is then in the position to add to and subtract from that regulatory plan. Once OMB has reviewed the regulatory plan and obtained agency compliance with its "recommendations," the agency must then submit a final regulatory plan, which is then combined by OMB with the plans of other agencies, and embodied in the final overall regulatory plan for the executive branch.

For many rules, inclusion in or exclusion from the regulatory plan can be the entire ball game, so to speak. Yet, these draft regulatory plans are not available to the public for comment. This bill would change that. It would require the rulemaking agency to make its draft regulatory plan available to the public at the time it is submitted to OMB. The same would be true for the final regulatory plan. This would enable the public to weigh in with their opinions about the pros and cons of conducting certain rulemakings and to track OMB's role in determining the agency's rulemaking agendas.

The fact that OMB has worked so hard over the past 5 years to keep its role in the rulemaking process hidden from the public. Congress, and the courts, has undermined the public's confidence in the rulemaking process and violated the essence of the Administrative Procedure Act passed by Congress in 1946. In passing that act, Congress made a clear statement that agency rulemaking was to be public matter, with public participation. OMB, through its diligence in obfuscating its role, has undermined those congressionally established principles.

And so we come to the substance of the bill we are introducing today. The Rulemaking Information Act of 1976 would do the following:

SUMMARY OF RULE MAKING INFORMATION ACT OF 1986

Requires each rulemaking agency to establish a file at the time the agency takes any action to consider whether to initiate a rulemaking.

The agency must include in that file:

Any written material it receives, including any written material from OMB;

Any written material it submits to OMB, including any draft of a proposed or final rule;

A description of any substantive change the agency made in a proposed or final rule because of OMB's comment and an explanation of the specific reasons for such change.

Requires OMB personnel who have contacts with outside parties about a rulemaking to make a record of such contacts, if the contacts form a basis for making a recommendation to the rulemaking agency, and forward such record to the rulemaking agency;

Requires that the agency place the record of OMB contacts in the public file.

Requires that the agency make the file available to the public at the time the rule is published in the Federal Register as proposed.

Requires the agency on an annual basis to publish in the Federal Register a list of those rules that were sent to OMB for review but which were never published as proposed.

Requires the agency to maintain a file which records the dates on which proposed and final rules are sent to OMB for review and the dates on which such rules are returned to the agency by OMB.

Requires each agency to make available to the public the draft and final regulatory programs required to be submitted by the agency to OMB pursuant to Executive Order 12498.

Limits the period for review by OMB to 30 days for proposed and final rules, with the opportunity for an additional 30 day extension for good cause.

The Senate spoke unanimously in 1982 in support of disclosure provisions similar to the ones contained in the bill we are introducing today. OMB has had ample time to implement such requirements administratively but has steadfastly refused to

significantly move in that direction. We are in the position of having to mandate what should already have been done voluntarily in the name of good government. It is my hope that we can have early hearings on this bill in the Governmental Affairs Committee and obtain swift passage of this legislation in the Senate this spring. My friends and colleagues, it is a bill whose time has not only come, but is long overdue.

I ask unanimous consent that the full text of the bill be printed in full following my remarks.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 2023

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Rule Making Information Act of 1986".

ESTABLISHMENT OF FILE

SEC. 2. (a) At the time an agency takes any action to consider whether to initiate a rule making, the agency shall establish a file with respect to such rule making. Such file shall include—

(1) a copy of any written material received by the agency pertaining to the rule or the rule making;

(2) a copy of any written material, including any draft of the proposed rule or of the final rule, which was submitted by the agency or its employee to an officer of the Government directed by the President to review proposed or final rules for their regulatory impact or such officer's employee;

(3) a description of any substantive change made by the agency in the proposed or final rule which responds to any written or oral comment made by such officer or such officer's employee on any draft proposed rule, proposed rule, draft final rule, or final rule;

(4) a written explanation of the specific reasons of the agency for making each substantive change described pursuant to paragraph (3); and

(5) a copy of each summary provided to the agency with respect to the rule or the rule making pursuant to subsection (b).

(b) In any case in which an officer of the Government designated by the President to review proposed or final rules for their regulatory impact, or such officer's employee, has a written or oral contact with a person outside the Government with respect to a rule or a rule making, and such contact provides a basis for any written or oral recommendation or comment by such officer or such officer's employee to an agency with respect to such rule or rule making, such officer or such officer's employee, shall, within 5 days after making such recommendation or comment, provide such agency with a written summary of such contact, including an identification of the person with whom such contact was made and a description of the substance of such contact.

(c)(1) Each agency shall make available, as of the date of publication referred to in subparagraph (2), to the public for inspection and copying any file required to be established by the agency pursuant to this section.

(2) An agency shall publish in the Federal Register with a notice of proposed rule making with respect to a rule, or in the case of rule for which an advanced notice of proposed rule making is published, with such notice, a statement specifying—

(A) that the agency has established the file required by this section with respect to such rule making;

(B) that such file is, as of the date of such publication, available for public inspection and copying; and

(C) the times when, and location where, the public may inspect and copy such file.

(d) The file required to be established by this section with respect to a rule making shall be in addition to any file required to be established for such rule making under subchapter II of chapter 5 of title 5, United States Code, or any other law.

AGENCY NOTIFICATION OF STATUS OF RULES

SEC. 3. (a) Within 30 days after the end of each calendar year, each agency shall publish in the Federal Register—

(1) a list of proposed rules which the agency forwarded for review during the most recently completed calendar year to the officer of the Government designated by the President to review proposed or final rules for their regulatory impact and for which the agency did not publish a notice of proposed rule making or advanced notice of proposed rule making during such calendar year; and

(2) a statement of the current status of each rule making, described pursuant to subparagraph (1), and the agency's plan for the rule making in the coming year.

(b) Each agency shall maintain a file, available for inspection by the public upon request, which records the date each proposed, or final rule was submitted by the agency to an officer of the Government directed by the President to review proposed or final rules for their regulatory impact and the date when the respective proposed or final rule was returned by such officer to the agency.

PUBLIC AVAILABILITY OF REGULATORY PROGRAM

SEC. 4. (a) Each agency shall make available to the public for inspection and copying any draft regulatory program or any final regulatory program submitted by the agency to an officer of the Government designated by the President to review regulatory programs.

(b) Within 15 days after submitting a draft regulatory program or a final regulatory program to an officer of the Government designated by the President to review regulatory programs, an agency shall publish a notice in the Federal Register. Such notice shall specify—

(1) that the agency has completed the preparation of the draft regulatory program or the final regulatory program, as the case may be, and has submitted such regulatory program to the President or such officer;

(2) that such regulatory program is available for public inspection and copying; and

(3) the times when, and the location where, the public may inspect and copy such regulatory program.

DEFINITIONS

SEC. 5. For purposes of this Act:

(1) The term "agency" has the same meaning as in section 551(1) of title 5, United States Code.

(2) The term "person" has the same meaning as in section 551(2) of such title.

(3) The term "regulatory program" means a statement submitted by an agency to the President or to an officer of the Government designated by the President which contains—

(A) an overview of the agency's regulatory policies, goals, and objectives for the program year; and

(B) such information concerning all significant regulatory actions of the agency, planned or underway, including—

(i) actions taken to consider whether to initiate rule making;

(ii) requests for public comment; and

(iii) the development of documents that may influence, anticipate, or could lead to the commencement of rule making proceedings at a later date,

as the President or such officer deems necessary.

(4) The term "rule" has the same meaning as in section 551(4) of such title.

(5) The term "rule making" has the same meaning as in section 551(5) of such title.

(6) The term "substantive change" means any change other than a clerical or grammatical change.

TIME PERIOD FOR REVIEW

SEC. 6. (a) If the President directs an officer of the Government to review proposed or final rules for their regulatory impact, except for subsection (b) of this section the time for any such review of a proposed or final rule shall not exceed thirty days following the receipt of the proposed or final rule by such officer. The time for each such review may be extended for good cause by such officer for up to but no more than an additioal thirty days. Notice of any such extension, together with a succinct statement of the reasons therefore shall be inserted in the rule making file.

(b) Nothing in this section shall supercede any deadline imposed by statute or judicial order or the authority of an agency to proceed with a rule in an emergency situation.

EFFECT OF ACT

SEC. 7. Nothing in this Act authorizes or requires the review of a proposed or final rule or any rulemaking plans or activities of an agency by an official of the Government designated to do so by the President.

EFFECTIVE DATE

SEC. 8. This Act shall become effective upon enactment.●

● Mr. DURENBERGER. Mr. President, today I rise to join my colleague, the gentleman from Michigan, to express my strong support for this bill. S. 2023 is intended to safeguard Congress and the public's right to know what factors an agency considers when it promulgates rules. That Congress enjoys this right is undeniable. The privilege of rulemaking power is conferred upon agencies by Congress in order to provide administrative flexibility in the face of technological and scientific complexity. And, Congress saw fit to protect the public's basic right to know when it enacted the Administrative Procedure Act in 1946.

Both of these rights are now endangered because Congress has failed to effectively counter OMB's growing power to change the course of regulatory policy as it sees fit under procedural authorities created by Executive order.

Some regard OMB's exercise of these powers as unconstitutional. I do not share that view. As chairman of the Intergovernmental Relations Sub-

committee, which is charged with responsibility for overseeing the regulatory process generally and OMB's exercise of its responsibilities particulary, I believe that we need a watchdog on excessive regulatory costs and intrusive regulatory strategies. I believe it is appropriate for the President to play this role. One reason we need an institutional voice for economy in rulemaking is that while the Federal Government creates the regulatory programs, it's not the Federal Government that pays most of their costs. So there is little incentive in Washington to take a hard look at them. Most regulatory costs aren't reflected in the Federal budget: they are hidden in expenses paid by businesses, State and local governments, and in the prices consumers pay for goods and services. While the costs are shifted and spread out across the economy, they mount up. By one 1980 estimate, if the Federal Government had to write a check for the sum total of all the regulatory programs it was responsible for, that check would have been for over $100 billion in 1980 alone.

One hundred billion dollars. That's a big check. We ought to be sure that we're not paying for more than we need. No more regulatory overkill. We ought to be sure that what we're getting is worth what we're paying for. No more getting taken for a regulatory ride.

Given OMB's analogous role in budget decisions who better than it to act as a voice for holding down regulatory costs? But, OMB's power should not be exercised in secret and it should not be unilateral. For one thing, OMB cannot substitute for agency expertise because the voices of scientific and technical understanding are not those of budget examiners, economists or management specialists. For another, Congress, should not have to count on OMB to act as its interpreter when in comes time to decide the meaning of a particular statute or provision. We do not need OMB's voice to substitute for our own. Nor can the views of the public be represented by OMB, at least not those of the people regulation seeks to protect.

Those who believe as I do that Government runs best when its institutions are open—when everyone, not just a select few, is allowed to play his or her part—should support this legislation.

There are those who believe this bill does not go far enough. Under the logic that you can't get too much of a good thing some say we should pull the doors wide open on the OMB regulatory review process. We should make OMB and the agencies log every call, summarize every exchange, and keep it all open and on the record as it happens. The fact is that taking disclousre to the extreme will do more harm than good. This bill is not intended to bury agencies and OMB in paperwork. Nor is it intended to squelch free and candid discussion by executive branch personnel and the President's staff.

Instead, it recognizes that OMB review has fundamentally altered the process of agency rulemaking. It allows that process to continue, but at the same time it builds in protections so that Congress' delegation of rulemaking authority is not abused nor its legislative intentions subverted. And, so that the spirit of the Administrative Procedure Act—the law which has protected the public's right to participate in rulemaking since 1946—is not trampled in the quest for more cost efficient, less intrusive regulatory policies.

How would it do that? It requires the agency to establish a rulemaking file at the time it considers whether or not to initiate rulemaking, earlier than currently required under the Administrative Procedure Act, but in keeping with the current realities imposed by the new Office of Management and Budget process.

What would go in the file? Less than some might hope, more than others might like. It would include a copy of any written material received by the rulemaking agency pertaining to rulemaking, a copy of any written material—including drafts of proposed and final rules submitted to OMB—and a description of any changes made in the substance of the rule as a result of the OMB review process, the reasons for making the change, as well as a copy of any summaries of conversations provided the agency by OMB. Under this bill, neither the agency nor OMB is required to document every conversation or every editorial correction, only those few that made a substantive difference. This bill does not envision a paperwork nightmare, and it should not create one.

When would the file be available to the public? Only when the rule is published in the Federal Register. This seems necessary to protect the right of the OMB and the agency to a free and candid exchange of views as to the rule.

What about those rules that are proposed by the agency but are withdrawn as a result of the regulatory review process? How can the public's right and the Congress' need for this kind of information be systematically and routinely made available? This bill would require within 30 days of the end of each calendar year agencies to publish a list of rules which it forwarded to OMB for review but which were not published in the Federal Register. And, the agency will be required to keep log when it sends a rule to OMB, and when that rule is returned.

Finally, what about the new, and potentially farsweeping, regulatory planning process created by Executive Order No. 12498? In the first year of the program, OMB allowed agencies to make their draft proposed programs, the ones sent to OMB, available to the public. As far as I can see, no earthshaking negative consequences befell the executive branch as a result of letting some sun shine in on this process. It should continue. If this bill is enacted, it will. Each agency is required to make available to the public a copy of any draft or final regulatory program submitted by the agency to OMB for review. Notice of the availability of these programs is to be given in the Federal Register within 15 days after they are submitted.

If the race toward regulatory reform goes to the swift, then there is no doubt that the President would win it. The OMB regulatory review process is one of a number of powerful tools the President is using to change the course of regulatory policy through administrative means. But what can be done quickly by the President alone, without a firm basis in the law, can be undone just as quickly by the stroke of another President's pen. For those of us who believe in real regulatory reform, that's just not good enough. We in Congress cannot, we must not, short cut the regulatory policy process by abdicating our responsibility to participate in regulatory policymaking. Nor should we give away the public's right to our rush to cut the costs of Federal regulation.●

ADDITIONAL COSPONSORS

S. 812

At the request of Mr. GARN, the name of the Senator from Alabama [Mr. DENTON] was added as a cosponsor of S. 812, a bill to amend the Export Administration Act of 1979 to authorize controls on the export of capital from the United States.

S. 1090

At the request of Mr. HELMS, the name of the Senator from South Dakota [Mr. ABDNOR] was added as a cosponsor of S. 1090, a bill to amend section 1464 of title 18, United States Code, relating to broadcasting obscene language, and for other purposes.

S.1224

At the request of Mr. MCCLURE, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 1224, a bill to limit the importation of softwood lumber into the the United States, and for other purposes.

S.1456

At the request of Mr. LAUTENBERG, the names of the Senator from North Dakota [Mr. ANDREWS] and the Senator from Wisconsin [Mr. PROXMIRE] were added as cosponsors of S. 1456, a bill to recognize the Army and Navy Union of the United States of America.

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S. 1874

At the request of Mr. WICKER, the names of the Senator from Pennsylvania [Mr. HEINZ], and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of S. 1874, a bill to authorize quality educational programs for deaf individuals, to foster improved educational programs for deaf individuals throughout the United States, to reenact and codify certain provisions of law relating to the education of the deaf, and for other purposes.

S. 1923

At the request of Mr. THURMOND, the name of the Senator from Texas [Mr. GRAMM] was added as a cosponsor of S. 1923, a bill to provide for additional bankruptcy judges.

S. 1969

At the request of Mr. SPECTER, the names of the Senator from North Dakota [Mr. ANDREWS], and the Senator from Vermont [Mr. STAFFORD] were added as cosponsors of S. 1969, a bill to create a National Center for the Prosecution of Child Abuse under the Office of Justice Programs in the Department of Justice.

S. 1979

At the request of Mrs. KASSEBAUM, the name of the Senator from Florida [Mrs. HAWKINS] was added as a cosponsor of S. 1979, a bill to fulfill the purposes of the Airport and Airway Improvement Act of 1982, promote air passenger safety, and provide equity to airway users.

SENATE JOINT RESOLUTION 234

At the request of Mr. WILSON, the names of the Senator from Utah [Mr. HATCH], the Senator from Nebraska [Mr. ZORINSKY], the Senator from Massachusetts [Mr. KERRY], the Senator from Georgia [Mr. NUNN], the Senator from Florida [Mrs. HAWKINS], the Senator from Tennessee [Mr. GORE], the Senator from Idaho [Mr. MCCLURE], the Senator from Minnesota [Mr. DURENBERGER], the Senator from Tennessee [Mr. SASSER], the Senator from Illinois [Mr. SIMON], the Senator from New Jersey [Mr. LAUTENBERG], the Senator from Pennsylvania [Mr. HEINZ], the Senator from Connecticut [Mr. DODD], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Joint Resolution 234, a joint resolution to designate the week of February 9, 1986 through February 15, 1986, as "National Burn Awareness Week."

SENATE JOINT RESOLUTION 257

At the request of Mr. CHILES, the names of the Senator from Maryland [Mr. SARBANES], the Senator from Nebraska [Mr. ZORINSKY], the Senator from California [Mr. CRANSTON], the Senator from Vermont [Mr. STAFFORD], the Senator from North Dakota [Mr. ANDREWS], the Senator from Louisiana [Mr. JOHNSTON], and the Senator from Mississippi [Mr. STENNIS] were added as cosponsors of Senate Joint Resolution 257, a joint resolution to designate the first Friday of May each year as "National Teacher Appreciation Day."

SENATE JOINT RESOLUTION 258

At the request of Mr. RIEGLE, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of Senate Joint Resolution 258, a joint resolution designating "Baltic Freedom Day."

SENATE CONCURRENT RESOLUTION 90

At the request of Mr. LAUTENBERG, the names of the Senator from Ohio [Mr. METZENBAUM], and the Senator, from Wisconsin [Mr. PROXMIRE] were added as cosponsors of Senate Concurrent Resolution 90, a concurrent resolution urging the President to convince a conference to develop an International Seaport Security Agreement relating to seaport and passenger vessel security among the United States, its allies, other interested nations, and the private sector.

SENATE CONCURRENT RESOLUTION 103

At the request of Mr. HART, the names of the Senator from Wisconsin [Mr. PROXMIRE], and the Senator from Maine [Mr. MITCHELL] were added as cosponsors of Senate Concurrent Resolution 103, a concurrent resolution to commend Bishop Desmond Tutu for his courageous work for peace and equality in South Africa.

SENATE RESOLUTION 82

At the request of Mr. D'AMATO, the names of the Senator from Iowa [Mr. GRASSLEY], and the Senator from Georgia [Mr. MATTINGLY] were added as cosponsors of Senate Resolution 82, a resolution to preserve the deduction for State and local taxes.

SENATE RESOLUTION 298

At the request of Mr. WEICKER, the names of the Senator from North Dakota [Mr. BURDICK], and the Senator from Michigan [Mr. RIEGLE] were added as cosponsors of Senate Resolution 298, a resolution expressing support and encouragement of the Senate for the U.S. Disabled Ski Team at the 1986 World Disabled Ski Championship to be held in Salem, Sweden, on April 6 through April 17, 1986.

AMENDMENTS SUBMITTED

CONRAIL SALE

PRESSLER (AND OTHERS) AMENDMENT NO. 1438

(Ordered to lie on the table.)

Mr. PRESSLER (for himself, Mr. DIXON, Mr. Long, Mr. EXON, Mr. ABDNOR, Mr. ZORINSKY, Mr. SIMON, and Mr. HEINZ) submitted an amendment intended to be proposed by them to amendment No. 1437 proposed by Mr. DANFORTH to the bill (S. 638) to amend the Regional Rail Reorganization Act of 1973 to provide for the transfer of ownership of the Consolidated Rail Corp. to the private sector, and for other purposes; as follows:

On page 30, insert the following immediately after line 10:

PROCEEDING BY THE INTERSTATE COMMERCE COMMISSION

SEC. 303. (a) Within ten years after the date of consummation of the sale of the interest of the United States in the common stock of Conrail to Norfolk Southern Corporation, any railroad which—

(1) had rail operating revenues of less than $1 billion in calendar year 1985; and

(2) alleges that it has been injured by diversion of traffic from its lines as a result of the acquisition of Conrail by Norfolk Southern Corporation and the exercise of market power by the consolidated Norfolk Southern Corporation and Conrail system (hereinafter in this section referred to as the "consolidated system"),

may petition the Interstate Commerce Commission to institute a proceeding under this section.

(b)(1) The Commission shall commence a proceeding under this section, if the Commission finds that such railroad, as a result of the exercise of market power by the consolidated system, has experienced—

(A) a diversion of traffic from its lines equal to or greater than three and one half percent of the number of carloads handled by such railroad during calendar year 1985; or

(B) a rerouting of traffic that has resulted in a loss of revenues from such traffic that is equal to or greater than three and one-half percent of the total railway operating revenues of such railroad in calendar year 1985.

(2) For purposes of this subsection, Norfolk Southern Corporation shall be required to establish by clear and convincing evidence that such diversions have occurred because of superior service and efficiency on the route to which the traffic is diverted. In the absence of such evidence, the Commission shall presume that the diversions occurred as a result of the exercise of market power by the consolidated system.

(c) In any such proceeding, the Commission shall determine what additional divestitures or conditions are necessary to eliminate the market power of the consolidated system in each major rail market served by the consolidated system, and to provide to such railroad fully competitive alternative connecting service to each such major rail market. The Commission shall issue an order directing that such divestitures be completed and that such conditions be imposed. In determining whether the consolidated system has market power in any major rail market, the Commission shall accord substantial weight to merger guidelines issued by the Department of Justice.

(d) Divestitures ordered to be completed under this section shall be made at a price agreed upon by Norfolk Southern Corporation and the purchaser. If Norfolk Southern Corporation and the purchaser are unable to agree on such a price, the Commission shall fix a price for the divestiture which shall not reflect any value of the line to be divested that is attributable to the market power of the consolidated system in any rail market.

(e) The Commission shall issue a final order in any such proceeding within one

year after the date of filing of a petition under subsection (a) of this section.

(f) Any order issued under this section shall be subject to judicial review in the same manner and to the same extent as orders issued by the Commission under chapter 113 of title 49, United States Code. Any divestiture ordered to be completed, or condition imposed, by the Commission under this section shall be deemed to be approved by the Commission under such chapter 113.

NOTICES OF HEARINGS

SUBCOMMITTEE ON LABOR, HEALTH AND HUMAN SERVICES, EDUCATION AND RELATED AGENCIES

Mr. WEICKER. Mr. President, I am pleased to advise the Senate that the Appropriations Subcommittee on Labor, Health and Human Services, Education and Related Agencies will hold its fiscal year 1987 public witness hearings on Tuesday, April 29, Thursday, May 1, Tuesday, May 6, Thursday, May 8, Tuesday, May 13, and Thursday, May 15. The hearings will be preceded by a hearing on Thursday April 24, when the subcommittee will take testimony from Members of Congress.

The deadline for interested groups and individuals to submit their requests for an opportunity to testify is Tuesday, March 4. All requests must be in writing and should be addressed to me in care of the Labor, Health and Human Services, Education and Related Agencies Appropriations Subcommittee, SD-131, Washington, DC, 20510.

Those persons whose requests are received by March 4, will receive a letter providing instructions for their appearance before the subcommittee.

In addition, the deadline for those who only wish to submit statements for the hearing record will be Tuesday, May 20. Such statements must be no longer than seven double-spaced pages, and three copies should be sent to me in care of the subcommittee.

COMMITTEE ON SMALL BUSINESS

Mr. WEICKER. Mr. President, I would like to announce that the Senate Small Business Committee will hold a full committee hearing on February 6, 1986, on the impact of tax reform and simplification proposals on small business. The hearing will commence at 9:30 a.m. in room 428A of the Russell Senate Office Building. For further information, please call Bill Langdon or Steve Williams of the committee staff at 224-5175.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. McCLURE. Mr. President, I would iike to announce for the information of the Senate and the public the scheduling of 2 days of oversight hearings before the Committee on Energy and Natural Resources. The hearings will be held in room SD-366 in the Dirksen Senate Office Building as follows:

Wednesday, February 5, beginning at 10 a.m. to consider the President's proposed budget for fiscal year 1987 with witnesses from the Department of the Interior.

Wednesday, February 5, beginning at 1:30 p.m. to consider the President's proposed budget for fiscal year 1987 with witnesses from the Department of Agriculture (Forest Service).

Thursday, February 6, beginning at 10 a.m. to consider the President's proposed budget for fiscal year 1987 with witnesses from the Federal Energy Regulatory Commission.

Thursday, February 6, beginning at 1 p.m. to consider the President's proposed budget for fiscal year 1987 with witnesses from the Department of Energy.

Those wishing to submit written statements for the hearing record should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information regarding these hearings, you may wish to contact Mr. Richard Grundy at 224-2564.

Mr. McCLURE. Mr. President, I would also like to announce for the information of the Senate and the public the scheduling of a public hearing before the Committee on Energy and Natural Resources to consider the nomination of Jed Dean Christensen, of Virginia, to be Director of the Office of Surface Mining Reclamation and Enforcement.

The hearing will take place Tuesday, February 18, 10 a.m. in room SD-366 of the Senate Dirksen Office Building in Washington, DC.

Those wishing to testify or who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, room SD-358 Dirksen Senate Office Building, Washington, DC 20510. For further information, please contact Jim Beirne or Becky Barbour at 202-224-2564.

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that the Subcommittee on Energy Research and Development of the Committee on Energy and Natural Resources will conduct a hearing on Monday, February 24, 1986, beginning at 10 a.m. in room SD-366 of the Senate Dirksen Office Building in Washington, DC.

Testimony will be received on S. 1686, the "Renewable Energy/Fuel Cell Systems Integration Act of 1985" and S. 1687, the "Fuel Cells Energy Utilization Act of 1985."

Those wishing to testify or who wish to submit written statements for the hearing record should write to the Subcommittee on Energy Research and Development, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510.

For further information regarding this hearing, please contact Mr. K.P. Lau on the subcommittee staff at 202-224-4431.

ADDITIONAL STATEMENTS

DURENBERGER VS. CASEY

● Mr. BOSCHWITZ. Mr. President, I rise today to enter into the RECORD an article from the Christian Science Monitor. The article sets the record straight concerning a flap between my good friend and colleague from Minnesota, DAVE DURENBERGER, and CIA Director Bill Casey, fought on the front pages of the Washington Post.

Senators may recall, late in the last session, a front page article in the Post in which DAVE appeared to be leveling some major league criticisms at Casey and his handling of the CIA. That article then engendered a Casey response, again on page 1.

As it turns out, the squabble was really a creation of the Washington Post. As the article I am submitting indicates, the Post took out of context and sensationalized a few remarks DAVE made over a long luncheon with several reporters in which the general tenor of DAVE's comments were really very positive about Casey and the Agency. DAVE praised Casey for his professionalism and called him "as good a DCI [Director of Central Intelligence] as we have had in a long time." Nevertheless, it was a couple of criticisms that DAVE made over a long lunch in response to reporters' questions that the Post put on page 1, setting off a public—and needless—dispute that served no one's interests, except possibly the Post's.

I believe each of us ought to read the true story of what DAVE said and then ponder a bit about the influence and power of the media.

I ask that the article from the Christian Science Monitor be printed in the RECORD.

The article follows:

[From the Christian Science Monitor, Dec. 3, 1985]

DURENBERGER VS. CASEY

(By Godfrey Sperling Jr.)

The other day Sen. David F. Durenberger (R) of Minnesota, chairman of the Select Committee on Intelligence, discussed at some length the Central Intelligence Agency and its director, William J. Casey, with a group of reporters over lunch.

The next morning the Washington Post's Page 1 headline read: "CIA, Casey Criticized by Hill Chairman." And the lead paragraph said that Mr. Durenberger criticized Mr. Casey "for lacking a 'sense of direction' and particularly for failure to understand the Soviet Union.

Yet Durenberger and several of the reporters who attended that luncheon thought that the Post's caption beneath the senator's picture on Page 3, where the article was continued, caught his basic view of Casey. It read, "[Durenberger] defends Casey as 'Professional'."

These reporters all thought that Durenberger's criticism of and reservations about Casey came within a context of an overall appreciation of Casey and the job he was doing. They said they believed that a positive lead (and headline), reflecting Durenberger's defense of Casey, would have accurately mirrored the thrust of the senator's comments on the intelligence director.

The Post's story set off an explosion, at least in the pages of that influential newspaper. Casey, responding to the story, fired off a public letter, asking at one point, "What are [CIA officers around the world] to think when the chairman of the Senate Select Committee offhandedly, publicly, and inaccurately disparages their work?"

Casey might have held his fire if he had been aware of this response by Durenberger at the luncheon to the question "Do you have any doubts about the leadership of the CIA?"

"Not yet," he said. "I think Bill is as good a DCI [director of central intelligence] as we have had in a long time. That forgives a whole lot of things by saying that.

[Chuckling.] "And you would have an 8-to-7 vote on the committee if I put it to a vote." Continuing:

"Bills' problems are still more style and perception than they are substance. I think as a substantive professional politician he is just a darn good guy in that job. When he gets them into trouble by, say, shutting down information to the Congress or something like that, it's because they can't be trusted.

"There is a professionalism in Bill. He knows the craft. He knows something of the politics involved in it. He knows about the relationship between information and intelligence and between intelligence and public policy."

Later on in the lunch, Durenberger said he would give Casey a plus for his job performance. Then he expressed this reservation: "One of the things we [the committee] will be sorting out is whether . . . [national-security adviser Robert] McFarlane shouldn't be the President's right hand on the intelligence input into policy and Casey ought to be the pro who runs the organization.

The next day the Post ran a Page 1 article in which Sen. Patrick Leahy of Vermont, the ranking Democrat on the committee, said he believed that Casey wanted to go back to the days when there was no congressional oversight of CIA covert operations.

And the day after, the Post on its Sunday Op-Ed page printed, side by side, the Casey letter and a responding letter from Durenberger in which the senator defended congressional oversight and public discussion of the CIA. What developed here was a yelling contest between Durenberger and Casey that probably would not have occurred if Casey had heard the carefully and quietly uttered Durenberger assessment of him at the lunch.

The Post's ombudsman, Sam Zagoria, followed up a few days later with his own carefully researched appraisal of these stories and public exchanges in his column on his newspaper's opinion page.

"[The Post's] report could not be supported by snips and snaps in the transcript," he wrote, "but Senator Durenberger's string of compliments for Mr. Casey and the vagueness of his suggestions for possible change by the end of 1986 should have discouraged treating the story so one-sidedly."

"Leads and headlines have a tendency to simplify and polarize positions." Mr. Zagoria added, "and this happened here. The result has been a four-day battle in the Post, and I doubt that it was intended by the three public officials. What started out as a low-key discussion about relationships between a key Senator and an agency escalated into a shouting match and some of the most surprised were the Senator and some of his auditors."●

REMEMBERING DR. KING

● Mr. CHILES. Mr. President, this Nation has just observed the first celebration of Dr. Martin Luther King, Jr.'s birthday. It was a time of celebration, a time to reflect on the life of Dr. King and the meaning of his words.

In his famous "I have a dream" speech, Dr. King could have modified and described his dream with any word in his vast vocabulary. I think it is both fitting and insightful that he gave the foundation for his dream a patriotic foundation, when he said "It is rooted in the American dream." So it is with this day of observance—it was and should continue to be an American holiday.

Black Americans are justly proud that America has decided to honor a black person in this manner. However, Dr. King's teachings are such that all Americans can be proud. Proud that the Constitution has been expanded to include every race, both sexes, all nationalities, and every creed. The Constitution which was written almost 200 years ago was not a perfect document but rather a document with perfect potential. Dr. King, the civil rights movement, the ultimate desegregation of America, all served to make our Nation stronger and our Constitution relevant.

On Monday, January 20, 1986, almost every television set and every radio played the words of Dr. King over and over. His full vibrant voice once again reminded us of the dream—sadly, it is a dream that remains unfulfilled for far too many of our citizens.

On this day, Monday, January 27, 1986, the radio stations have gone from hard reality to hard rock, from the eloquent words of Dr. King to the unintelligible lyrics of Twisted Sister, but the impact of Dr. King's life must not be restricted to 1 day's celebration, but rather to a life's commitment. So, although the television stations will now devote their cameras and tape machines to Miami Vice or Dynasty, the image of the man and the movement should inspire each of us to help those less fortunate than ourselves.

There are many people in this great Nation for whom the dream of Dr. King means little. We read the cold statistics and often we are not impressed at all, but behind those statistics are live, warm human beings. Unemployment among minority youth in this country has reached depression levels, fueled in part by the scandalous drop-out rates among black and Hispanic teenagers; 4 of every 10 black youths who begin school will drop out and in some areas the number is even higher for Hispanic youths. It may be true that we are moving forward in our economy, but we are leaving far too many of our young people behind. The business community which by and large supported the King holiday should also support hiring practices and training programs that will enable our youth to gain meaningful work experiences.

In infant mortality, according to every statistic I have seen, black infants are twice as likely to die in their first year as are white infants. Even American white infant death rates supersede many white European rates. The data is startling, the facts are irrefutable. For the unemployed, for dropouts, for young babies "at risk," the dream is a hollow vision. The solutions we seek do not all rest with Government programs. As the ranking member of the Budget Committee, I understand quite clearly the limitations we face from the public sector but public/private partnerships could be extremely helpful. My legislative proposals on infant mortality (S. 1209) and dropouts (S. 1771) are not total solutions—they are only beginning efforts.

The real challenge which faces all Americans is that of making the American dream live for so many who are left out and forgotten. The highest honor we can pay to Dr. King's memory is not simply setting aside a day to remember, but to commit our lives to not forgetting those who need and deserve our help.●

BUDGET SCOREKEEPING REPORT

● Mr. DOMENICI. Mr. President, I hereby submit to the Senate the first report on congressional budgetary action in the 2d session of the 99th Congress, prepared by the Congressional Budget Office. This report also serves as the scorekeeping report for the purposes of section 311 of the Congressional Budget Act, as amended.

The report follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, January 27, 1986.

DEAR MR. CHAIRMAN: The attached report shows the effects of Congressional action on the budget for fiscal year 1986. The estimated totals of budget authority, outlays, and revenues are compared to the appropriate or recommended levels contained in the most recent budget resolution, S. Con. Res. 32. This report meets the requirements for Senate scorekeeping of Section 5 of S. Con. Res. 32 and is current through January 24, 1986. The report is submitted under Section 308(b) and in aid of Section 311 of the Congressional Budget Act, as amended.

Since my last report no changes have occurred in budget authority, outlay, and revenue estimates.

This letter is my first report on Congressional budgetary action for the second session of the Ninety-ninth Congress.

With best wishes,

Sincerely,

RUDOLPH G. PENNER.

CBO WEEKLY SCOREKEEPING REPORT FOR THE U.S. SENATE, 99th CONGRESS, 2d SESSION, AS OF JANUARY 24, 1986

[Fiscal Year 1986—in billions of dollars]

	Budget authority	Outlays	Revenues	Debt subject to limit
Current Level [1]	1,073.0	986.8	793.6	1,946.3
Budget Resolution, Senate Concurrent Resolution 32	1,069.7	967.6	795.7	[2] 2,078.7
Current Level is:				
Over Resolution by	3.3	19.2		
Under Resolution by			2.1	129.4

[1] The current level represents the estimated revenue and direct spending effects (budget authority and outlays) of all legislation that Congress has enacted in this or previous sessions or sent to the President for his approval. In addition, estimates are included of the direct spending effects for all entitlement or other programs requiring annual appropriations under current law even though the appropriations have not been made. The current level excludes the revenue and direct spending effects of legislation that is in earlier stages of completion, such as reported from a Senate committee or passed by the Senate. Thus, savings from reconciliation action assumed in Senate Concurrent Resolution 32 will not be included until Congress sends the legislation to the President for his approval. The current level of debt subject to limit reflects the latest U.S. Treasury information on public debt transactions.

[2] The current statutory debt limit is $2,078.7 billion.

FISCAL YEAR 1986, SUPPORTING DETAILS FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONGRESS, 2D SESSION, AS OF JANUARY 24, 1986

[In millions of dollars]

	Budget authority	Outlays	Revenues
I. Enacted in previous sessions:			
Revenues			793,551
Permanent appropriations and trust funds.	708,634	632,166	
Other appropriations	554,277	543,994	
Offsetting receipts	−190,586	−190,586	
Total enacted in previous sessions.	1,072,325	985,573	593,551
II. Enacted this session			
III. Continuing resolution authority.			
IV. Conference agreements ratified by both Houses.			
V. Entitlement authority and other mandatory items requiring further appropriation action:			
Payment to air carriers, DOT.	26	24	
Maritime, operating-differential subsidies.		3	
Retirement pay for PHS officers.	3		
Medical facilities loan guarantee.	2		
Payment to health care trust funds. [1]	(907)	(907)	
Advances to unemployment trust fund. [1]	(51)	(51)	
Federal unemployment benefits and allowances.	65	64	
Black lung disability trust fund.	46	46	
Veterans compensation.	286	235	
Veterans readjustment benefits.	180	137	
Veterans pensions	10		
Defense pay raise—military.		675	
Compact of free association.	92	92	
Total entitlements	710	1,276	
Total current level as of January 24, 1986.	1,073,035	986,849	793,551

FISCAL YEAR 1986, SUPPORTING DETAILS FOR CBO WEEKLY SCOREKEEPING REPORT, U.S. SENATE, 99TH CONGRESS, 2D SESSION, AS OF JANUARY 24, 1986—Continued

[In millions of dollars]

	Budget authority	Outlays	Revenues
1986 budget resolution (S. Con. Res. 32)	1,069,700	967,600	795,700
Amount remaining:			
Over budget resolution.	3,335	19,249	
Under budget resolution.			2,149

[1] Interfund transactions do not add to budget totals.

Note: Numbers may not add due to rounding.●

PRESIDENT'S PROLIFE PROCLAMATION

● Mr. HUMPHREY. Mr. President, for the second year in a row, President Reagan has proclaimed the Sunday preceding the anniversary of the disastrous Roe versus Wade abortion decision, "National Sanctity of Human Life Day." Sunday, January 19, 1986, is that day set aside when we recall how we as individuals, and we as a society, have failed to respect life at every stage of development. National Sanctity of Human Life Day is a day when we are called to pray for the unborn, the newly born, the handicapped and the elderly. It is a day to reflect on the inherent dignity of each human being, and to assist concretely those whose sanctity of life is threatened.

Many institutions have observed National Sanctity of Human Life Day in the past, and more will be doing so in the years to come. The Southern Baptists have placed the day on their official calendar; and over 20,000 primarily Protestant congregations have observed for the third year a day of prayer for the unborn.

The increased recognition and efforts on behalf of the unborn fostered by National Sanctity of Human Life Day are commendable, and long overdue. They presage further, more extensive advances in our struggle to grant unborn children the rights that all human beings enjoy. They also portend observances by a greater number of organizations, and proclamations of even grander scope: For example, the President has before him a request from six U.S. Senators calling for a declaration of 1987 as "The Year of the Unborn."

I applaud all such efforts, and I encourage renewed activity in defense of life.●

UKRAINIAN INDEPENDENCE DAY

● Mr. BOSCHWITZ. Mr. President, on January 22, Ukrainians throughout the world observed the anniversary of Ukrainian independence. Following World War I, the newly established Ukrainian State was recognized by a number of governments including the Russian Federated Soviet Republic. Despite Moscow's pledge to respect the independence of the Ukraine, it soon attacked the young state both militarily and by employing subversion from within. After almost 4 years of war, the Ukraine fell to the forces of Soviet Russia and her eastern neighbors. After losing their short-lived freedom, the Ukrainian people have endured a long period of religious and national persecution and economic exploitation.

In the 1930's, for example, Stalin ordered the liquidation of the Ukrainian autocephalous Orthodox Church. Many bishops and priests were murdered, as were an untolled number of intellectuals. In 1932-33, over 7 million men, women, and children perished in the Soviet Government's intentionally induced famine.

World War II brought more tragedy upon the Ukrainian people. On one side, the fleeing Red troops left behind devastated lands. On the other side, the advancing Nazi armies engaged in looting, sent many on forcible deportations to slave labor camps, and even mass executions. According to reports of the Soviet Ukrainian Academy of Sciences, the Nazi occupation resulted in the extermination of over 5 million people.

After World War II, the suffering did not end. In 1946, the Kremlin destroyed the Ukrainian Catholic Church in western Ukraine by arresting, murdering or deporting many in its hierarchy.

For some time, we have received reports that hundreds of young poets, writers, researchers, and human rights activists have been arrested and sentenced to long imprisonment or confined to psychiatric institutions. According to U.S. Government reports, although Ukrainians account for only 12 percent of the Soviet population, they account for 40 percent of all political prisoners in the Soviet Union.

Although deprived of freedom and suffering great losses, the Ukrainian people have never surrendered nor given up hope of liberation. By recalling their short-lived independence they continue to demonstrate their undying struggle to regain their freedom.

This year, while commemorating Ukrainian independence, we as Americans wish to commend the Ukrainian people for their commitment to the principles of liberty they have so undeniably demonstrated.●

PROPOSED ARMS SALES

● Mr. LUGAR. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance

notification of proposed arms sales under that act in excess of $50 million or, in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of a proposed sale shall be sent to the chairman of the Foreign Relations Committee.

In keeping with my intention to see that such information is available to the full Senate, I ask to have printed in the RECORD the notifications which have been received.

The notifications follow:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, DC.

Hon. RICHARD C. LUGAR,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 86-19, concerning the Department of the Air Force's proposed Letter(s) of Offer to Korea for defense articles and services estimated to cost $82 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

PHILIP C. GAST,
Director.

[Transmittal No. 86-19]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Korea.

(ii) Total Estimated Value:

	Millions
Major defense equipment [1]	0
Other	$82
Total	82

[1] As defined in Section 47(6) of the Arms Export Control Act.

(iii) Description of Articles or Services Offered: Cooperative Logistics Supply Support Arrangement (CLSSA) under a Foreign Military Sales Order II (FMSO II) Blanket Order Requisition for spare parts and supplies to support AT-37, C-123K, F-4, F-5, F-16 and T-33 aircraft and other systems and subsystems of U.S. origin.

(iv) Military Department: Air Force (KBV).

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:

(vi) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: None.

(vii) Section 28 Report: Case not included in Section 28 report.

(viii) Date Report Delivered to Congress: January 22, 1986.

POLICY JUSTIFICATION

KOREA—SUPPLY SUPPORT ARRANGEMENT

The Government of Korea has requested a Cooperative Logistics Supply Support Arrangement (CLSSA) under a Foreign Military Sales Order II (FMSO II) Blanket Order Requisition for spare parts and supplies to support AT-37, C-123K, F-4, F-5, F-16, and T-33 aircraft and other systems and subsystems of U.S. origin. The estimated cost is $82 million.

This sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Eastern Asia.

The Republic of Korea needs these spare parts and supplies to assure that aircraft previously procured from the United States are maintained in a mission capable status. The Korean Air Force will have no difficulty in absorbing these spare parts and supplies.

The sale of this equipment and support will not affect the basic military balance in the region.

Procurement of these items and services will be from the many contractors providing similar items and services to the U.S. armed forces.

Implementation of this sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Korea.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington, DC.

Hon. RICHARD C. LUGAR,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 86-23, concerning the Department of the Air Force's proposed Letter(s) of Offer to Turkey for defense articles and services estimated to cost $97 million. Shortly after this letter is delivered to your office, we plan to notify the news media.

You will also find attached a certification as required by Section 620C(d) of the Foreign Assistance Act of 1961, as amended, that this action is consistent with Section 620C(b) of the statute.

Sincerely,

PHILIP C. GAST,
Director.

[TRANSMITTAL NO. 86-23]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT

(i) Prospective Purchaser: Turkey.

(ii) Total Estimated Value:

	Millions
Major defense equipment [1]	0
Other	$97
Total	97

[1] As defined in Section 47(6) of the Arms Export Control Act.

(iii) Description of Articles or Services Offered: Foreign Military Sales Order II (FMSO II) Blanket Order Requisition for follow-on spare parts in support of C-130E, RF/F-4E, F/RF-5A/B, F-100C/D/F, TF/F-104G, T-33, T-37B/C and T-38 aircraft and other systems or subsystems of U.S. origin.

(iv) Military Department: Air Force (KBX).

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vi) Sensitivity of Technology Contained in the Defense Articles of Defense Services Proposed to be Sold:

(vii) Section 28 Report: Case not included in Section 28 report.

(viii) Date Report Delivered to Congress: January 22, 1986.

POLICY JUSTIFICATION

TURKEY—SUPPLY SUPPORT ARRANGEMENT (FMSO II)

The Government of Turkey has requested the purchase of a blanket order requisition case for follow-on spare parts in support of C-130E, RF/F-4E, F/RF-5A/B, F-100C/D/F, TF/F-104G, T-33, T-37B/C and T-38 aircraft and other systems or subsystems of U.S. origin. The estimated cost is $97 million.

This sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Turkey in fulfillment of its NATO obligations; furthering NATO rationalization, standardization, and interoperability; and enhancing the defense of the Western Alliance.

Turkey needs this logistics support to maintain the readiness of Turkish Air Force weapon systems of U.S. origin. The cooperative logistics support will be provided in accordance with, and subject to the limitations on use and transfer provided for under the Arms Export Control Act, as embodied in the terms of sale. This sale will not adversely affect either the military balance in the region or U.S. efforts to encourage a negotiated settlement of the Cyprus question. Turkey will have no difficulty absorbing this logistics support into its armed forces.

Procurement of these items and services will be from the many contractors providing similar items and services to the U.S. forces.

Implementation of this sale will not require the assignment of any additional U.S. Government or contractor personnel to Turkey.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

UNDER SECRETARY OF STATE FOR SECURITY ASSISTANCE, SCIENCE AND TECHNOLOGY,
Washington, DC, January 17, 1986.

Pursuant to section 620C(d) of the Foreign Assistance Act of 1961, as amended (the Act), and the authority vested in me by Department of State Delegation of Authority No. 145, I hereby certify that the provision to Turkey of a blanket order requisition case of support of C-130, RF/F-4E, F/RF-5A/B, F-100C/C/F, and other U.S. origin aircraft at an estimated value of $97 million is consistent with principles contained in section 620C(b) of the Act.

This certification will be made part of the certification to the Congress under section 36(b) of the Arms Export Control Act regarding the proposed sale of the abovenamed articles and is based on the justification accompanying said certification, and of which such justification constitutes a full explanation.

WILLIAM SCHNEIDER, Jr.●

PROPOSED ARMS SALES

● Mr. LUGAR. Mr. President, section 36(b) of the Arms Export Control Act requires that Congress receive advance notification of proposed arms sales under that act in excess of $50 million or, in the case of major defense equipment as defined in the act, those in excess of $14 million. Upon such notification, the Congress has 30 calendar days during which the sale may be reviewed. The provision stipulates that, in the Senate, the notification of pro-

posed sales shall be sent to the chairman of the Foreign Relations Committee.

In keeping with the committee's intention to see that such information is immediately available to the full Senate, I ask to have printed in the RECORD the notification which has been received. The classified annex referred to in the covering letter is available to Senators in the office of the Foreign Relations Committee, room SD-423.

The notification follows:

DEFENSE SECURITY ASSISTANCE AGENCY,
Washington. DC.

Hon. RICHARD C. LUGAR,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding under separate cover Transmittal No. 86-20, concerning the Department of the Navy's proposed Letter(s) of Offer to Korea for defense articles and services estimated to cost $14 million or more. Since most of the essential elements of this proposed sale are to remain classified, we will not notify the news media.

Sincerely,

PHILIP C. GAST,
Director.

[Transmittal No. 86-20]

NOTICE OF PROPOSED ISSUANCE OF LETTER OF OFFER PURSUANT TO SECTION 36(b)(1) OF THE ARMS EXPORT CONTROL ACT

(i) (U) Prospective Purchaser: Korea.

(ii) Total Estimated Value:

Major defense equipment	(Deleted.)
Other	(Deleted.)
Total	(Deleted.)

(iii) Description of Articles or Services Offered: (Deleted).

(iv) (U) Military Department: Navy (LKZ).

(v) (U) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None.

(vi) (U) Sensitivity of Technology Contained in the Defense Articles or Defense Services Proposed to be Sold: See Annex under separate cover.

(vii) (U) Section 28 Report: Case not included in Section 28 report.

(viii) (U) Date Report Delivered to Congress: January 22, 1986.●

ORDERS FOR TUESDAY

RECESS UNTIL 11 A.M.

Mr. DOLE. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 11 a.m. on Tuesday, January 28, 1986.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECOGNITION OF SENATOR PROXMIRE

Mr. DOLE. I further ask unanimous consent that, following the two leaders under the standing order, there be a special order in favor of the Senator from Wisconsin [Mr. PROXMIRE] for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

ROUTINE MORNING BUSINESS

Mr. DOLE. Following the special order in favor of Senator PROXMIRE, I ask unanimous consent that there be a period for the transaction of routine morning business not to extend beyond the hour of 12 noon with Senators permitted to speak therein for not more than 5 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS BETWEEN THE HOUR OF 12 NOON AND 2 P.M.

Mr. DOLE. Following routine morning business, I ask unanimous consent that the Senate stand in recess between the hour of 12 noon and 2 p.m. in order for the weekly party caucuses to meet.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. DOLE. At 2 p.m., the Senate will resume consideration of S. 638, the Conrail matter.

Votes will occur during Tuesday's session.

Pending, by unanimous-consent request, at 2 o'clock is the Danforth motion to waive section 303 of the Budget Act with respect to the consideration of S. 638.

Once we complete action on that motion, I understand there will be a series of amendments.

Since there is a joint session tomorrow evening, and most Senators will be in the Capitol, we might be able to debate and offer amendments up until around 7 or 7:30 tomorrow evening.

RECESS UNTIL 8:30 P.M.

Once the Senate completes its business on Tuesday, I ask unanimous consent that it stand in recess until 8:30 p.m., Tuesday, January 28.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATE OF THE UNION ADDRESS

Mr. DOLE. Mr. President, Senators are asked to assemble in the Senate Chamber no later than 8:30 p.m. in order to proceed as a body to the Hall of the House of Representatives in order to hear the President's State of the Union Address.

We will have a late evening tomorrow night with the joint session of Congress.

RECESS UNTIL 11 A.M. TOMORROW

Mr. DOLE. Mr. President, there being no further business to come before the Senate, I move, in accordance with the order just entered, that the Senate stand in recess until 11 a.m. tomorrow, Tuesday, January 28.

The motion was agreed to; and, at 4:50 p.m., the Senate recessed until tomorrow, Tuesday, January 28, 1986, at 11 a.m.

NOMINATIONS

Executive nominations received by the Secretary of the Senate January 24, 1986, under authority of the order of the Senate of January 3, 1985:

DEPARTMENT OF STATE

Gaston Joseph Sigur, Jr., of Maryland, to be an Assistant Secretary of State, vice Paul D. Wolfowitz.

Paul Dundes Wolfowitz, of the District of Columbia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Indonesia.

DEPARTMENT OF DEFENSE

Michael P.W. Stone, of California, to be an Assistant Secretary of the Army, vice Pringle P. Hillier, resigned.

NATIONAL COUNCIL ON EDUCATIONAL RESEARCH

Robert Lee McElrath, of Tennessee, to be a member of the National Council on Educational Research for a term expiring September 30, 1987, vice M. Blouke Carus, resigned.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

James H. Duff, of Pennsylvania, to be a member of the National Museum Services Board for the remainder of the term expiring December 6, 1986, vice Craig C. Black, resigned.

SENIOR FOREIGN SERVICE

The following-name career member of the Senior Foreign Service of the U.S. Information Agency for promotion in the Senior Foreign Service to the class indicated:

Career member of the Senior Foreign Service of the United States of America, class of Career Minister:

Stanton H. Burnett, of Washington.

Career members of the Senior Foreign Service of the United States of America, class of Minister-Counselor:

Robert R. Gosende, of Massachusetts.
Frederic S. Mabbatt, of Idaho.
Kent D. Obee, of Nevada.
Eugene Frederick Quinn, of California.

The following-named career members of the Foreign Service of the U.S. Information Agency for promotion into the Senior Foreign Service to the class indicated:

Career members of the Senior Foreign Service of the United States of America, class of Counselor:

Charles L. Bell, of Ohio.
Gilbert R. Callaway, of Arkansas.
Michael P. Canning, of North Dakota.
Charles H. Dawson, of Tennessee.
Laurence Garufi, of New Jersey.
Christopher M. Henze, of California.
John E. Katzka, of California.
Robert E. Knopes, of Virginia.
Claude William La Salle, II, of Louisiana.
Lewis R. Luchs, of Maryland.
Thomas E. O'Connor, of Florida.
Ronald P. Oppen, of Florida.
Majorie Ann Ransom, of Virginia.
Leon M.S. Slawecki, of Virginia.
Frank C. Strovas, of Colorado.
John C. Thomson, of California.
Gerald A. Waters, of Illinois.

SENIOR FOREIGN SERVICE

The following-named career members of the Senior Foreign Service of the Agency for International Development for promotion in the Senior Foreign Service to the classes indicated:

Career members of the Senior Foreign Service of the United States of America, class of Career Minister:

Peter W. Askin, of Virginia.
Owen Cylke, of Maryland.
John William Koehring, of Virginia.
Sarah Jane Littlefield, of California.

Career members of the Senior Foreign Service of the United States of America, class of Minister-Counselor:

Peter J. Bloom, of the District of Columbia.
Laurance William Bond, of California.
William R. Brown, of Connecticut.
Dennis M. Chandler, of Virginia.
Charles E. Costello, of Maryland.
Richard M. Dangler, of Colorado.
Robert G. Huesmann, of Maryland.
William Edwin Paupe, of Maryland.
James R. Phippard, of Arizona.
Jimmie M. Stone, of California.
Charles Darwin Ward, of Virginia.
Charles Frederick Weden, Jr., of Virginia.

The following-named career members of the Foreign Service of the Agency for International Development for promotion into the Senior Foreign Service, and consular officer and secretary in the Diplomatic Service appointments, as indicated:

Career members of the Senior Foreign Service of the United States of America, class of Counselor:

Byron H. Bahl, of the District of Columbia.
Peter Benedict, of Virginia.
Charles C. Brady, of Texas.
Douglas J. Clark, of Colorado.
Phyllis L. Dichter, of New Jersey.
Sara A. Frankel, of California.
Paul Fritz, of Virginia.
Myron Golden, of Ohio.
Howard Raymond Handler, of Virginia.
Robert Hechtman, of Virginia.
Harry Richard Johnson, of Rhode Island.
Richard Alan Johnson, of Maryland.
Hjalmar P. Kolar, of Virginia.
G. Franklin Latham, of New Jersey.
Dayton L. Maxwell, of Maryland.
Duncan R. Miller, of Virginia.
Linda Ellen Morse, of Virginia.
William Bennett Nance, of North Carolina.
Raymond Frank Rifenburg, of California.
Satishchandra P. Shah, of Florida.
Nancy M. Tumavick, of Virginia.
Paul Edward White, of Virginia.
Aaron S. Williams, of Illinois.
Frederick A. Zobrist, of Hawaii.

Career members of the Senior Foreign Service of the United States of America, class of Counselor, and consular officers and secretaries in the Diplomatic Service of the United States of America:

Ellsworth M. Amundson, Jr., of Virginia.
Francis Joseph Kenefick, of California.
Lynn Monroe Lee, of Virginia.
Charles R. Matthews, of Virginia.
Richard C. McClure, of California.

IN THE AIR FORCE

The following-named officer for promotion to the grade indicated under the provisions of article II, section 2, clause 2, of the Constitution of the United States of America:

To be lieutenant colonel

Jerry L. Ross, [redacted]

IN THE ARMY

The following-named officer for promotion to grade indicated under the provisions of article II, section 2, clause 2 of the Constitution of the United States of America:

To be colonel

Lt. Col. Sherwood C. Spring, [redacted]

IN THE MARINE CORPS

The following-named officer for promotion to the grade of colonel under the provisions of article II, section 2, clause 2 of the Constitution of the United States of America:

Lt. Col. Bryan D. O'Connor, U.S. Marine Corps, [redacted]/7508

Executive nominations received by the Senate January 27, 1986:

FEDERAL TRADE COMMISSION

Andrew John Strenio, Jr., of Maryland, to be a Federal Trade Commissioner for the unexpired term of 7 years from September 26, 1982, vice George W. Douglas, resigned.